

Exhibit C

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x
5
6 INDEPENDENT ASSET MANAGEMENT LLC
7 and OLA HOLMSTROM,
8 Plaintiffs,
9
10 v. 1:07-CV-06431-JSR
11 DANIEL ZANGER,
12 Defendant.
13 -----x
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15

16 March 3, 2008
17 10:30 a.m.

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19 Deposition of JOSEPH J. PORCO, taken by
20 defendant, pursuant to notice, at the offices of
21 Jones Day, 222 East 41st Street, New York, NY
22 10017, before Joseph B. Pirozzi, a Registered
23 Professional Reporter and Notary Public of the
24 State of New York.
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2 STIPULATIONS
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4 IT IS HEREBY STIPULATED AND AGREED,
5 by and between counsel for the respective parties
6 hereto, that all objections, except as to form,
7 are reserved to the time of trial.
8 IT IS FURTHER STIPULATED AND AGREED
9 that the deposition may be signed and sworn to
10 before any officer authorized to administer an
11 oath.
12 IT IS FURTHER STIPULATED AND AGREED
13 that the sealing and filing of the deposition be
14 waived.
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1	Porco
2 APPEARANCES:	JOSEPH J. PORCO
3	called as a witness, having been duly sworn,
4 BAlestriere, PLLC	testified as follows:
5 Attorneys for plaintiffs	EXAMINATION
6 225 Broadway	BY MR. SEAR:
7 Suite 2700	MR. SEAR: Let's just note the time.
8 New York, NY 10007	It is about 25 of 11. Counsel had informed
9 BY: CRAIG STUART LANZA	me earlier that they were stuck in traffic
10 WILLIAM HOLLEMAN	and that accounts for a late start.
11	Q. Mr. Porco, directing your attention to
12 JONES DAY	2005. Were you associated with an entity called
13 Attorneys for defendant	Independent Asset Management?
14 222 East 41st Street	A. Yes.
15 New York, NY 10017	Q. And can we refer to that as IAM?
16 BY: THOMAS H. SEAR	A. Sure.
17	Q. And what was your position with IAM in
18	2005?
19	A. Managing director.
20	Q. And what were your responsibilities?
21	A. I dealt with several different areas,
22	interacted with administration and the
23	administrator down in Bermuda, interacted with
24	counsel to the fund, assisted with compliance
25	issues, handled previous audit by the NFA, and

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1 Porco
 2 handled daily operations for the trading manager
 3 in regards to administration in basic operational
 4 things, but I did not, I was not involved in the
 5 trading aspects of the company at all.
 6 Q. You referred to the fund. What fund
 7 are you referring to?
 8 A. The Independent Fund Limited.
 9 Q. And as of at least some point in 2005
 10 did Mr. Dan Zanger through an entity invest in
 11 so-called Class Z shares in that fund?
 12 A. Yes.
 13 Q. Putting aside the Class Z shares that
 14 Mr. Zanger purchased, did the fund in 2005 have
 15 any other investors?
 16 A. At the time that Dan came into the
 17 fund, none of the classes of shares, I believe,
 18 had any funds in them at that point. Previously
 19 there were.
 20 Q. In 2005 other than Mr. Zanger, at any
 21 time during that year, were there any other
 22 investors in the fund?
 23 A. I'm not clear on the date in which all
 24 of the Holmstrom came in, but that's in the
 25 record.

1 Porco
 2 retained per the agreement by IAM.
 3 Q. Was that 25 percent?
 4 A. It was 25 percent of the performance
 5 fee. For a period of time Dan received all of
 6 the management fee.
 7 Q. 18 months?
 8 I'm sorry, you have to answer.
 9 A. Yes. That was the terms of the
 10 agreement.
 11 Q. Other than those moneys, did IAM have
 12 any other revenues in 2005?
 13 A. The sole revenue was being generated
 14 from the fund. The only revenue coming in was
 15 from the Independent Fund Limited to the trading
 16 manager.
 17 Q. Besides the 25 percent of performance
 18 fees that we've talked about and the working
 19 capital contribution of Mr. Zanger in or about
 20 2004 and 2005, did IAM receive any other moneys
 21 from any source during that time frame?
 22 A. From what date?
 23 Q. 2004 and 2005.
 24 A. I believe we had to borrow, we were
 25 still in a situation where we had to borrow

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 1 Porco
 2 Q. Assuming that Mr. Holmstrom, I think
 3 the record will reflect, came in 2006, would it
 4 be fair to say that the only investment in the
 5 fund, to your knowledge, in 2005 was Mr. Zanger?
 6 A. I believe that is the case, yes.
 7 Q. And other than acting as trading
 8 manager for IFL, did IAM have any business
 9 activities in 2005?
 10 A. IAM's sole responsibility was to be the
 11 trading manager for the fund.
 12 Q. In 2004 did Mr. Zanger contribute
 13 approximately \$100,000 in working capital?
 14 A. The date of which he wired in money is
 15 in the records. He did make a contribution to
 16 this agreement, which was outlined with George
 17 Szele.
 18 Q. Was that \$100,000 initially?
 19 A. I believe it was 100 and then 50.
 20 Q. And during 2005 did IAM obtain revenues
 21 pursuant to performance fees from IFL?
 22 A. The lion's share of the revenues
 23 generated from Class Z, which Dan was managing,
 24 the lion's share of those revenues were passed
 25 through to Dan. A small remainderment was

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 1 Porco
 2 funds.
 3 Q. And how much money approximately did
 4 IAM borrow in 2005, order of magnitude?
 5 A. I don't know if I have a date. I don't
 6 have dates on it, but it may have been another --
 7 it may have been one of the last loans that we
 8 received. I'm not sure of the date.
 9 Q. And what was the last loan that you
 10 received?
 11 A. I believe it was \$50,000. It may have
 12 been within that time frame.
 13 Q. You were looking at a document just
 14 now. What is that?
 15 A. Just some notes that I made for myself.
 16 MR. SEAR: I would ask that since the
 17 witness looked at the document in connection
 18 with his testimony we be given a copy of it.
 19 MR. LANZA: Sure.
 20 MR. SEAR: We can do that at a break.
 21 That's fine.
 22 Q. Did anybody else work at or for IAM in
 23 2005 besides yourself?
 24 A. George Szele.
 25 Q. Besides Mr. Szele and yourself, did

1 Porco
 2 anybody else work at IAM in 2004 and 2005?
 3 A. The services for the fund and services
 4 for the trading manager were set up in an
 5 out-sourced arrangement, so we had attorneys,
 6 administration, auditors, accounting, et cetera,
 7 but they weren't employees of IAM.

8 Q. So just you and Mr. Szele were the only
 9 employees at IAM in 2005?

10 A. Correct.

11 Q. And what were his duties and
 12 responsibilities in 2005?

13 A. George was a managing director senior
 14 to myself. He was involved in overseeing
 15 responsibilities for the fund as a director at
 16 that point in time for the fund itself. He was
 17 involved in following trading activity and
 18 involved in every aspect of the operation, I mean
 19 in general.

20 Q. When you say following the trading
 21 activity, it is something that Mr. Szele did on a
 22 constant and frequent basis?

23 A. He examined frequently talent of
 24 managers, researched managers for potential
 25 opportunities for the fund. The fund had the

1 Porco
 2 that were to be followed, and I believe that's,
 3 in part, part of the problems, that Dan exceeded
 4 those limitations.

5 Q. Am I correct, though, that on a daily
 6 basis at day end, Mr. Szele had full access of
 7 all of the trading information through Goldman,
 8 Sachs of Dan's trades?

9 A. I believe the trades were visible at
 10 day end, yes. Some of the stuff would be
 11 swept -- Goldman would sweep some money out to a
 12 couple of other houses that Dan utilized and some
 13 of that may have trailed behind. It may not have
 14 been there at the same exact time of any trades
 15 that he did at Goldman.

16 Q. Let me show you what we have premarked
 17 as Zanger Exhibit 1.

18 (Zanger Exhibit 1 was marked for
 19 identification)

20 Q. And Zanger 1 purports to be a financing
 21 statement for Independent Fund Limited for 2006.
 22 And Zanger Exhibit 2 purports to be such a
 23 statement for December 2005.

24 (Zanger Exhibit 2 was marked for
 25 identification)

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 1 Porco
 2 ability to expand into other classes and shares.
 3 He interacted with Dan when he was able
 4 to get Dan to respond. And he interacted with
 5 counsel, with the administrator, with the board
 6 of directors of the fund, with Appleby Sperling,
 7 the Bermuda counsel, dealt with issues as they
 8 arose with every aspect of the operation, if
 9 there were forms that needed to be done with the
 10 BMA, or whatever would arise.

11 Q. And did Mr. Szele follow Dan's trading
 12 activities on a frequent and constant basis?

13 A. Yes. As frequent as he could. There
 14 was some lapse in response and then there was
 15 some issues of nondisclosure which arose from
 16 Dan.

17 Q. Was Mr. Szele able on a daily basis to
 18 access the trading records of Dan from Goldman,
 19 Sachs?

20 A. In real time, I don't believe so. I
 21 believe by day end, you know.

22 Q. Yes.

23 A. He could see, you know, after the fact.
 24 But they were to have a very specific
 25 understanding of limits and drawdowns and such

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 1 Porco
 2 Q. Is Zanger Exhibit 1 what it appears to
 3 be, which is a copy of financial statement for
 4 IFL for the year ending 2006?

5 A. Yes, it's Deloitte's summary.

6 Q. Is Zanger Exhibit 2 the same thing for
 7 the year-end 2005?

8 A. Yes.

9 Q. Looking at Zanger Exhibit 1, page 3, do
 10 you see expenses?

11 A. Yes.

12 Q. Other than payment from a portion of
 13 the performance fee, did IAM for the year-end
 14 2006 -- withdrawn.

15 Am I correct that in the year 2006 IAM
 16 did receive a portion of the management fee for a
 17 period of that year?

18 A. I believe a very, very small amount,
 19 yes.

20 Q. Putting aside the portion of the
 21 performance fee and the portion of the management
 22 fee that IAM received for the year 2006, did IAM
 23 receive any payments in connection with any of
 24 the other expenses listed on this page for the
 25 year 2006?

1 Porco
 2 A. I'm not quite sure I understand what
 3 you are asking.
 4 Q. The administrative fees and expenses
 5 listed there, were any of those moneys paid to
 6 IAM for the year 2006?
 7 A. Paid to as revenue? No.
 8 Q. Paid to in any form or fashion?
 9 A. They may have been passed through for
 10 fees attributable, you know, they had to be
 11 covered per the offering memorandum. I'm not
 12 quite sure looking at this from here, but the
 13 offering memorandum provided for certain fees to
 14 be covered from the fund and those fees, for
 15 instance, if you had a fee payable to Williams
 16 Mullen, which was the fund attorney, then those
 17 fees would have to be, you know, covered per the
 18 offering memorandum. So things of that nature
 19 only would be included in your statement.
 20 Q. Putting aside pass-throughs where IAM
 21 received moneys and passed it on to somebody
 22 else, were any of these other expenses, do they
 23 reflect moneys paid to IAM that were not passed
 24 through to somebody else, putting aside the
 25 performance fee and the management?

1 Porco
 2 would come out of the fund.
 3 Q. And IAM has access to that information?
 4 A. I believe that information has already
 5 been given to yourselves in the documents that
 6 were forwarded, the answer would be yes.
 7 Q. So you have full access to the
 8 underlying documentation for all these expenses?
 9 A. It would be broken down -- in order to
 10 get a reimbursement for a fund expense you would
 11 have to submit a formal document to the fund
 12 administrator who would then review it for its
 13 appropriateness per the offering memorandum and
 14 then it would be released if and only if it was
 15 an appropriate expense.
 16 Q. So the answer is you do have access to
 17 that information?
 18 A. Which I just said a moment ago, yes, I
 19 do.
 20 Q. What activities did Mr. Szele engage in
 21 in 2005 in an attempt, if any, to increase the
 22 revenues of the fund and IAM?
 23 A. Quite a few, which I'm sure he can
 24 address in greater detail than I can myself.
 25 George was continually trying to raise assets for

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 1 Porco
 2 A. Other than reimbursement of expenses
 3 per the offering memorandum, no.
 4 Q. And the other expenses listed here, do
 5 you see \$72,798?
 6 A. Yes.
 7 Q. Do you know what those expenses
 8 represent?
 9 A. Those would probably be operational
 10 reimbursement per the memorandum.
 11 Q. These would have been expenses to IAM?
 12 A. That may have been paid out of pocket
 13 by IAM and then reimbursable per the offering
 14 memorandum.
 15 Q. Is there any other way for us to figure
 16 out what those expenses are in the absence of an
 17 accounting for IFL?
 18 A. I'm sure they are all detailed exactly
 19 by the fund administrator. Everything had a
 20 series of checks and balances to be sure that any
 21 fee that ever came out of the fund was
 22 appropriate and eligible and mandatory, et
 23 cetera, and we would always check not only with
 24 the fund administrator, but also with Tom McVeigh
 25 of Williams Mullen on any fee whatsoever that

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 1 Porco
 2 the fund for the methodology of Dan's trading,
 3 numerous meetings, extensive travel, continual
 4 attempts to present the fund opportunity and
 5 Dan's investment strategy on behalf of the fund
 6 to endless contacts that George has in his
 7 database which was accumulated through many years
 8 of previous activities and relationships that
 9 he's had.
 10 Q. Did you do anything in terms of
 11 accompanying to increase revenues for IAM and the
 12 fund in 2005?
 13 A. To increase revenues of IAM, assets
 14 would have to be increased in the fund, because
 15 that's from where IAM drew its revenue if there
 16 was to be any revenue.
 17 So the bulk of the marketing
 18 responsibilities were carried out by George. My
 19 role was more of an administrative role and a
 20 liaison between different parties that the fund
 21 operated with and following up on daily
 22 operations. But I myself also because of my
 23 familiarity with the fund, AND in some degree
 24 Dan's trading methodology, from time to time made
 25 attempts to try to introduce the opportunity to

1 Porco
 2 some high net worth individuals for their review
 3 hoping that they would find favor with Dan's
 4 methodology and find it appropriate for
 5 themselves to contribute in assets as well.

6 Q. Could you tell us the name or identity
 7 of any of these individuals?

8 A. I don't know that I -- do I need to
 9 tell him the names of these individuals?

10 MR. LANZA: Tom, can we have a moment?

11 Q. Well, how many such individuals did you
 12 contact?

13 A. I would say, you know, four or five
 14 relationships that I had.

15 Q. This was in 2005?

16 A. 2005 -- yes, the end of 2005, early
 17 2006.

18 Q. Let me show you what we have premarked
 19 as Zanger Exhibit 4. Is this a copy of the
 20 agreement between Dan and IAM?

21 (Zanger Exhibit 4 was marked for
 22 identification)

23 A. Assuming that it is the exact one that
 24 they signed, I would say yes.

25 Q. Excuse me. I misspoke. The one I just

1 Porco
 2 reflecting upon the correspondence between George
 3 Szele and Dan Zanger by e-mail, whatever they
 4 exchanged back and forth for understandings as
 5 you are operating a fund.

6 There were times there was concern
 7 about Dan's investment performance and, you know,
 8 phone calls were made and e-mails were sent
 9 trying to get a response from him and
 10 instructions were given and instructions were
 11 ignored.

12 Q. Were you part of any of those
 13 conversations?

14 A. No, but they exist by e-mail.

15 Q. Beyond what you have told us, that they
 16 exist by e-mail, can you tell us about any other
 17 understanding between Dan and IAM beyond RCA and
 18 in the agreements and understandings set forth in
 19 Zanger Exhibits 3 and 4?

20 A. Well, one of the understandings that
 21 was my understanding, being in the phone
 22 conversation with Dan and with George, addresses
 23 this point of how much money Dan was going to put
 24 into the fund and why. And I understand the
 25 language of what the agreement says, but Dan made

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1 Porco
 2 showed you, I think, is the April 2005 addendum,
 3 is that right?

4 A. This is the addendum.

5 Q. Let me show you Zanger Exhibit 3. Is
 6 that a copy of the original agreement?

7 (Zanger Exhibit 3 was marked for
 8 identification)

9 A. Yes, it appears to be.

10 Q. And other than what is set forth in
 11 those two agreements, Zanger Exhibits 3 and 4,
 12 did Dan have any other obligations or agreements
 13 or understandings with IAM?

14 A. Yes, I believe he did.

15 Q. And what are you referring to?

16 A. I believe that he had an agreement with
 17 IAM with George via a group called RCA, I believe
 18 was their name, that George can speak to the
 19 exact terms of that. And I'm sure there were
 20 numerous specific, you know, understandings
 21 between the parties.

22 Q. Well, can you tell us any such
 23 understandings between the parties beyond the two
 24 agreements and the RCA matter?

25 A. I think they would be best understood

1 Porco
 2 it very clear that he was going to put \$50
 3 million into the fund.

4 Q. Is there any record of that, any
 5 document in existence that refers to that
 6 agreement?

7 A. I believe the agreement itself and
 8 other correspondence between George and Dan
 9 reflect that.

10 Q. What correspondence? Can you tell me
 11 what correspondence? I haven't seen any.

12 A. By e-mail, I believe, there is
 13 supporting dialogue to that effect,
 14 conversations --

15 Q. When was this?

16 A. I believe at the onset, the beginning
 17 of the relationship. And then early on in the
 18 relationship after the contract was established
 19 as well.

20 Q. Can you point me to any such e-mail or
 21 document?

22 A. I cannot, but I think George would be
 23 able to.

24 Q. Any other agreement or understanding
 25 beyond what you have told us now that you are

1 Porco
 2 aware of between Dan and IAM?
 3 A. Not that I can recollect at this point.
 4 I'm trying to think. There's probably something.
 5 Q. Was IAM represented by counsel in
 6 connection with the creation of the October 2004
 7 agreement with Dan?
 8 A. George would have to, you know, answer
 9 that in regards to what degree it was reviewed.
 10 I believe it was forwarded to, I think, Tom
 11 McVeigh or another attorney took a look at it.
 12 But it wasn't drafted. I don't believe it was
 13 drafted by counsel, or by either party.
 14 Q. Do you know who drafted it?
 15 A. I think George and Dan collectively put
 16 it together.
 17 Q. Are you familiar with the terms and
 18 conditions of the agreement?
 19 A. To some degree, yes.
 20 Q. If you look at paragraph 4, page 2 of
 21 the draft agreement. Paragraph number 4.
 22 A. Okay.
 23 Q. It says, "IAM acknowledges that DZ has
 24 control of - remaining from or remaining in IFL -
 25 the assets it has placed or raised into Class Z,

1 Porco
 2 does not reflect his own obligation of what he
 3 put in and what he was to put in.
 4 Q. So this sentence doesn't deal with the
 5 \$5 million that he had placed into Class Z?
 6 A. No.
 7 Q. And the word "placed" has no meaning to
 8 this sentence?
 9 A. Placement means just what I just
 10 described in the hedge fund industry.
 11 Q. It means the same thing as raised?
 12 A. Placement means that when you place
 13 assets into an investment vehicle, the party
 14 making that introduction is making that
 15 placement.
 16 Q. Would it be fair to say --
 17 A. George could elaborate further on this.
 18 Again, the two of them worked through
 19 this in great detail with great mutual
 20 understanding.
 21 Q. Am I correct that for the calendar year
 22 2005 Dan's trading was spectacularly successful?
 23 A. It's all relative. It was very good in
 24 2005 as the audit shows. I think Dan has had
 25 even better years than that in the past.

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 1 Porco
 2 under the terms and guidelines of this
 3 agreement."
 4 Do you see that?
 5 A. I'm not sure I'm looking at the same
 6 thing. Can you point to it on the page?
 7 Q. Last sentence on page 2.
 8 A. What is your question?
 9 Q. My question is, did you understand in
 10 2004 that Dan had the right to withdraw the
 11 assets that he had placed or raised into Class Z
 12 under the terms and guidelines of this agreement?
 13 A. My understanding is that's referencing
 14 if Dan had raised capital of other people's
 15 assets which he tried, made some attempt to bring
 16 other investors into the fund, like any brokerage
 17 relationship or managed account relationship, if
 18 I'm an investment adviser or an introducing
 19 party, and I brought in seven or eight clients
 20 and their money comes in, but then decide I want
 21 those other parties to go over to Tom Brown down
 22 the street, that he had control over that.
 23 In other words, we weren't going to
 24 circumvent introductions that he made if he
 25 wanted to move them elsewhere, but that sentence

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 1 Porco
 2 Q. Okay. Early in 2006 did Dan withdraw
 3 \$4 million from Class Z?
 4 A. My recollection of the withdrawals of
 5 Dan are as follows: Upon getting his few
 6 tranches of income from the fund, which were very
 7 large, copies of which we sent to his accountant,
 8 I believe to yourselves, Dan called up and was on
 9 the phone and said, "I need to -- I need to take
 10 some money out of the fund," which George
 11 immediately got extremely concerned about because
 12 he was saying he wanted to come beneath the 5
 13 million and take money out of the fund. And Dan
 14 was emphatic about the fact that he wanted that
 15 money because he wanted to pay taxes with it.
 16 That was the first withdrawal that
 17 violated the agreement and started to cause great
 18 concern on George's part.
 19 I, on the other hand, looked at that
 20 scenario as being two separate issues. If Dan
 21 wanted to withdraw money and gave instruction to
 22 withdraw money and that request comes, that
 23 request has to be made known to the
 24 administrator. If he is saying I want to
 25 withdraw money, you have to pass that through.

1 Porco
 2 It is a procedurally prudent responsibility.
 3 On one hand, you are carrying out an
 4 instruction for a guy telling you I want to
 5 retain money to pay taxes and on the other hand
 6 he is violating the contract at the same time.
 7 So that was my first recollection of
 8 his withdrawing funds.
 9 Dan then withdrew money at another
 10 time. What had occurred was that he basically
 11 forced the trading of the fund to shut down with
 12 these margin calls and violations and forced the
 13 redemption, you know, to occur. Those are my
 14 two.

15 Q. Directing your attention to the item I
 16 asked you about the, \$4 million, was there ever
 17 any objection on the part of IAM or George or you
 18 to withdraw the \$4 million?

19 A. Of course.

20 Q. Where is that reflected?

21 A. It's reflected, to begin with, in the
 22 contract which Dan agreed to that he couldn't do
 23 that within the time frame of the agreement, for
 24 one, in writing. It's reflected in phone
 25 conversations and I'm sure in some of George's

1 Porco
 2 anywhere in this world that indicates that IAM or
 3 you or George objected in any way to Dan
 4 withdrawing the \$4 million in or about early
 5 2000 --
 6 A. Yes, I do.
 7 Q. Let me finish the question.
 8 -- in or about early 2006?
 9 A. Now that you have been helpful in
 10 rephrasing that, there are e-mails of great
 11 concern to the administrator to Dan -- I mean
 12 from George to the administrator about objecting
 13 to this withdraw and the concern about the impact
 14 of the fund because of the withdraw and I think
 15 there's more than one e-mail to that effect that
 16 I do recollect.
 17 Q. This was an e-mail sent from whom to
 18 whom?
 19 A. From George as managing director and
 20 IAM and also as director of the fund to the board
 21 of directors at Butterfield Fund Services.
 22 Q. What month would this have been done
 23 in?
 24 A. I couldn't tell you the exact timing.
 25 I remember reading it. I was cc'd on it.

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 1 Porco
 2 correspondence. There is also correspondence
 3 between the administrator and Dan.
 4 Dan was given correspondence from the
 5 administrator and Goldman as well was
 6 communicating to Dan about his trading activity.
 7 Q. I'm not asking about the trading
 8 activity. I'm talking about the \$4 million. Can
 9 you point me to one piece of paper anywhere in
 10 this world that even hints that IAM or George or
 11 you objected to the \$4 million withdrawal?
 12 A. As I said a moment ago, the fees of
 13 paper that's sitting before us.
 14 Q. Other than the contract which clearly
 15 does not prohibit it, can you point to any other
 16 piece of paper?
 17 A. I don't agree that the contract does
 18 not prohibit it. I think it is very clear that
 19 the contract does prohibit it.
 20 Q. I know you don't.
 21 A. When you depose George, you can ask him
 22 if he has any such e-mails.
 23 Q. I'm asking you if you are aware of any
 24 piece of paper in the world, putting aside the
 25 contract, are you aware of any piece of paper

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 1 Porco
 2 Q. Were they sent to Dan?
 3 A. I'm not sure who was cc'd on e-mails.
 4 There were communications around that same time
 5 period to Dan and I believe Dan corresponded
 6 directly to Butterfield at some point as well.
 7 Q. About the \$4 million?
 8 A. I believe he did.
 9 Q. What did the administrator do about the
 10 \$4 million?
 11 A. Well, I mean, the process occurred
 12 historically as it has been noted. Eventually he
 13 got his redemption.
 14 Q. I'm not talking about later in '06.
 15 I'm talking about the \$4 million that was
 16 withdrawn by Dan in early 2006. Do you
 17 understand that's what we're talking about?
 18 A. Yes, I understand.
 19 Q. Okay. My question to you is, were
 20 there any written communications to Dan in any
 21 way raising an objection to the \$4 million
 22 withdrawal?
 23 A. I believe, as I described, yes.
 24 Q. Can you point me to it now?
 25 A. I cannot point it to you now, but I'm

1 Porco

2 sure George can.

3 Q. Did you understand that the contract
4 provided that if there was asserted violation of
5 the contract that written notices would be
6 provided?

7 A. Where is that stated?

8 Q. Well, first let me ask you your
9 understanding. Do you understand that if IAM
10 wanted to assert there was a violation of the
11 contract it was supposed to provide written
12 notice?

13 A. Yes, I mean that's a standard clause in
14 most agreements.

15 Q. So that was your understanding? It's a
16 simple question.

17 A. Rephrase the question for me.

18 Q. Am I correct that it was your
19 understanding that if there was a violation of
20 the contract in the mind of IAM that what it was
21 supposed to do was to provide written notice to
22 Dan of the violation?

23 A. I believe that was my understanding,
24 yes.

25 Q. Now, directing your attention to 2005,

1 Porco

2 a violation?

3 A. He would have contacted Dan by
4 correspondence and told him there's a problem
5 with this and there's a problem with that, yes.

6 Q. Would it be fair to say that if Dan
7 violated that agreement that would be something
8 that was material?

9 A. I think that he violated the agreement
10 is material, yes.

11 Q. It would be material in terms of his
12 service as the trader for the Class Z shares?

13 A. It would be clear materially in any
14 violation that he caused. Why would it not be?

15 Q. I'm not suggesting that it wouldn't.
16 I'm just asking you the question.

17 Were you aware in 2005 there were
18 numerous margin calls that Dan had -- withdrawn.

19 Were you aware in 2005 there were
20 numerous margin calls that were met in connection
21 with Dan's trading on behalf of the Class Z
22 shares?

23 A. I became aware of these margin calls
24 because my function for the fund, one of which,
25 was to see that vendors were paid and kept

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1 Porco

2 was there any written notice of a violation of
3 the contract sent to Dan?
4 A. There were written notices of
5 violations sent to Dan regarding trading activity
6 and then us being made aware of those violations.
7 There was written correspondence from George to
8 Dan pointing out that he couldn't do what he was
9 doing and to cease doing it.

10 Q. This is in 2005?

11 A. I'm not clear on the dates of these
12 e-mails. We're talking about thousands of
13 e-mails over time.

14 Q. Let's stick to 2005. Were there any
15 written notices of the violation of the contract
16 sent to Dan by anybody on behalf of IAM during
17 that year?

18 A. If it was, it would have been sent by
19 George.

20 Q. Well, do you know of any?

21 A. I'm not aware of the specific e-mail,
22 no. But any time any type of problem would
23 arise, standard procedure is to deal with it and
24 George would have addressed it.

25 Q. He would have sent a written notice of

10 And the wire would get interrupted
11 because Dan would be out on a margin call and
12 Goldman would refuse to wire any money, which
13 then created the domino effect of problems
14 because then the money wouldn't get to the
15 administrator on time, the administrator wouldn't
16 be paid on time, any other fees that were due to
17 legal counsel, whatever fees were due to the BMA,
18 et cetera, couldn't be met because the wire would
19 be held up and then would have to be done again.

20 And this happened a number of different
21 times with these margin calls and trading
22 violations to the point where it became a very,
23 very large problem.

24 Q. Did this happen in 2005?

25 A. I don't have the dates of the various

1 Porco
 2 margin calls but they are all listed on some
 3 document which was forwarded and it was a
 4 staggering amount of violations that were going
 5 on which was very, very untypical of someone with
 6 Dan's trading acumen and knowledge and
 7 understanding of the business. It was bizarre.

8 Q. Am I correct that you were aware that
 9 these margin calls were being met in 2005?

10 A. We became aware of them after they
 11 occurred and then was notified, not always
 12 notified immediately by Gia at Goldman, but then
 13 eventually notified and we tried to get ahold of
 14 Dan and to track him down and get him to call us
 15 back after a few days and --

16 Q. My question to you is: Did any of
 17 these margin calls that were met happen in 2005?

18 A. I believe there were margin calls that
 19 were met in 2005.

20 Q. Am I correct that IAM knew about the
 21 margin calls --

22 A. At some point it had to know about
 23 them.

24 Q. Within days?

25 A. Within days, yes.

1 Porco

2 A. Yes.

3 Q. And it covers the management and
 4 incentive fee through June 2005?

5 A. I'm not sure of the -- let's see down
 6 at the bottom there's a note through June '05.

7 Q. You signed this check?

8 A. Yes, I did.

9 Q. If we look at the next check dated
 10 January 20, 2006, payable to Dan Zanger, is this
 11 the balance of the 2005 management and incentive
 12 fees?

13 A. Yes.

14 Q. You also signed this check?

15 A. Yes.

16 Q. As of January 20, 2006, had Dan ever
 17 violated the terms and conditions of the
 18 agreement that he had with IAM?

19 A. Yes.

20 Q. How many times?

21 A. Well, the first violation, as I
 22 understand it, was when he came down beneath the
 23 5 million shortly after coming in. Even prior to
 24 that, I believe he was supposed to put money in
 25 by a specific date and then dragged his feet and

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1 Porco

2 Q. So if there was margin call that was
 3 met in November of 2005, IAM would know about it
 4 at least within days?

5 A. That's an accurate statement.

6 Q. For the record, you did refer to this
 7 woman named Gia. Who is that?

8 A. She's representative at Goldman, Sachs.

9 Q. And who was Goldman, Sachs?

10 A. Custodian, degrading broker.

11 Q. Were they the so-called prime broker?

12 A. It could be referred to as that, yes.

13 Q. Let me show you what we have marked as
 14 Zanger Exhibit 5.

15 MR. SEAR: Here's a copy for counsel.

16 (Zanger Exhibit 5 was marked for
 17 identification)

18 Q. Can you tell us what these three checks
 19 are?

20 A. These checks are payments made to Dan
 21 per the agreement where he received the
 22 management fee in its entirety and 75 percent of
 23 the performance fee.

24 Q. So am I correct that the first check is
 25 dated July 14, 2005?

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1 Porco

2 didn't get it in on time, which we lost the
 3 opportunity for his robust performance during
 4 that period of time. He also -- you had given
 5 the date.

6 Q. The date is January 20, 2006, which is
 7 the date on the check.

8 It was your position that he had
 9 violated the contract with IAM prior to that
 10 date, and I'm asking on how many occasions.

11 A. It is hard to describe because it's a
 12 question of how he violated it, and in what
 13 regards he violated it, versus how he ultimately
 14 violated it.

15 He violated it in a number of different
 16 ways. He was supposed to stay within certain
 17 drawdowns and he did not.

18 Q. Prior to January of 2006 he didn't stay
 19 within the drawdowns?

20 A. I don't know the date of which he began
 21 to violate the drawdown understanding of the
 22 contract. I don't know that by heart.

23 Q. Let's start, again, to be fair to you.

24 My question to you is, prior to January
 25 20, 2006, to the best of your knowledge, did Dan

1 Porco
 2 ever violate the terms and conditions of the
 3 contract between IAM and himself?
 4 A. I would say yes.
 5 Q. And in what way or ways did he violate
 6 the contract prior to January 20, 2006?
 7 A. I believe he did not put the money in
 8 on time per the agreement. I believe that he
 9 withdrew money beyond the set limit that he had
 10 agreed to going in, as a minimum. I believe that
 11 he failed to communicate in and disclose to
 12 George those areas of the contract which mandate
 13 that he notify George of various trading activity
 14 such as these trading violations, and I'm not a
 15 trader myself, so I can't answer to the extent of
 16 which that's very relevant, but I know it is very
 17 relevant, his disclosures that he was supposed to
 18 be providing to George were not as they should
 19 have been per the agreement and then George did
 20 discover it.
 21 So it is a handful of examples of how
 22 he violated the agreement.
 23 Q. When did he take money out before
 24 January 20, 2006?
 25 A. He pulled money out to pay his taxes,

1 Porco
 2 left is not in my handwriting, I don't believe.
 3 Q. But it says "For accrued management fee
 4 plus first quarter performance fee 2006." Is
 5 that right?
 6 A. Yes. Whenever I -- before I ever
 7 processed a check and sent it out, George, being
 8 senior to me in the company, I would bring the
 9 checks, we would sit down and review it and then
 10 he would okay it, and it would be released.
 11 Q. From January '06 to April of '06 had
 12 Dan violated the contract?
 13 A. As I had stated before in that respect,
 14 yes.
 15 Q. How many times?
 16 A. Again, a handful of times and numerous
 17 times of which he did not give the disclosures
 18 that George was asking for. So I don't know how
 19 many times that occurred. I mean, Dan would
 20 know.
 21 George would know based on what he
 22 found out after the fact. I mean, he could put a
 23 number on it for you, but I could not.
 24 Q. These nondisclosures, do you think they
 25 were material?

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 1 Porco
 2 he claimed.
 3 Q. Do know when that was done?
 4 A. I don't have the documents.
 5 Q. You don't know whether it was before
 6 January 20, 2006?
 7 A. Of course it was. It was very early on
 8 in the relationship. It was right after he was
 9 paid his first tranche of money.
 10 Q. So it was in 2005?
 11 A. I believe so. Early on he had done
 12 that.
 13 Q. Was this midway in 2005?
 14 A. Again, sir, I don't have the dates for
 15 you.
 16 Q. Can you give me the month?
 17 A. It could be looked up.
 18 Q. Can you give me the month?
 19 A. We can go back to the administrator and
 20 look at the records and see when the withdrawal
 21 occurred. It's that simple.
 22 Q. Let's look at the third check here,
 23 which is April 21, 2006. And you signed this
 24 check also?
 25 A. Yes, I did. However, the note on the

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 1 Porco
 2 A. Yes, I do.
 3 Q. Material to his trading?
 4 A. Material to the well-being of the fund
 5 and its investors, yes.
 6 Q. Am I correct that after April of 2006
 7 IAM received payments of management fee amounts?
 8 A. After the 18-month period was over,
 9 then IAM was entitled to begin to actually start
 10 getting paid a little bit. For the most part,
 11 all through that cycle of time in which you see
 12 those three checks, the lion's share of all the
 13 revenue coming into the fund was going to Dan.
 14 Q. How much money did IAM invest in the
 15 Class Z shares?
 16 A. How much money did IAM invest itself?
 17 Q. Yes.
 18 A. IAM did not make an investment into the
 19 Class Z investment shares of its own money, no.
 20 Q. Okay. Subsequent to April of 2006, did
 21 IAM get paid moneys in connection with the
 22 management fee?
 23 A. Prior to the 18-month agreement --
 24 Q. I'm not asking you prior. I'm asking
 25 you after April of 2006.

1 Porco

2 A. If that's the date that the 18-month
3 had expired, then IAM became eligible for that
4 money and the answer would be yes. But prior to
5 its obligation to pay the full thing to Dan, all
6 of that was given to Dan.

7 Q. From April of 2006 up through December
8 of '06, was IAM paid a monthly management fee?

9 A. The management fee was paid. It's the
10 performance fee that would not be paid if there
11 was no performance. The management fee would
12 always be paid.

13 Q. Was any management fee paid to Dan
14 after April of 2006?

15 A. I believe after that point in time -- I
16 don't believe any longer the management fee was
17 paid to Dan.

18 Q. Why not?

19 A. I believe it was no longer owed to Dan.

20 Q. How could a management fee be owed to
21 IAM and not owed to Dan?

22 A. Because the trading manager of the
23 fund, quote, the entity is IAM, IAM was
24 outsourcing its management of that class of
25 shares to Dan per a contract and agreement with

1 Porco

2 this because he put money into the operation to
3 begin with for operational purposes.

4 At some point, I believe there is some
5 small amount, I don't know the exact figure, but
6 I think it was given to the accountant and also
7 forwarded earlier on in the paperwork that
8 forwarded it, but I think it is like \$30,000 or
9 something along those lines.

10 Q. Does \$58,000 refresh your recollection?

11 A. \$58,000 referring to what moneys were
12 put together?

13 Q. Referring to the amounts of moneys that
14 were not paid to Dan for fees that he was owed up
15 through the end of '06?

16 A. What does that include?

17 Q. That includes management fees and
18 performance fees.

19 A. I would have to go back to the records
20 and look, but in any case it is not a great
21 amount of money that we're speaking about in
22 regards to management fee.

23 Q. Who would know? Would George know?

24 A. George would know. George has those
25 records.

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1 Porco

2 the defined understanding.

3 Q. Didn't IAM owe Dan a portion of the
4 management fees from April through December of
5 2006?

6 A. Going back to the contract, does the
7 contract state that it would owe him a management
8 fee after a point in time?

9 Q. I think it was the 50-50 granting.

10 A. Again, this was drafted by Dan and by
11 George, so remembering every aspect of it ...

12 (Pause)

13 A. Maybe you might help me find that
14 section that speaks specifically what happens
15 after the 18-month on just the management fee.

16 Q. As you sit here now, do you know why
17 Dan wasn't paid a management fee after April of
18 2006?

19 A. My understanding there was some small
20 remnant amount of money that was owed to Dan in
21 that regard, but the damages that were accruing
22 were far greater than that small amount of money,
23 but also there was a point in which Dan was --
24 Dan was always aware from the very beginning of
25 our a capitalization situation. I mean, he knew

1 Porco

2 Q. Let me show you what we have premarked
3 as Zanger Exhibit 6.

4 (Zanger Exhibit 6 was marked for
5 identification)

6 Q. Have you seen this before?

7 A. Yes.

8 Q. And what is it?

9 A. It's the offering memorandum of the
10 fund, the Independent Fund Limited.

11 Q. And who prepared this?

12 A. This was prepared in part by Williams
13 Mullen and other counsel.

14 Q. And who was the other counsel?

15 A. It was an original document. George
16 would know the name of the attorney. Then
17 Williams Mullen worked on it from there and this
18 may have been over time evolved into this
19 document, you know.

20 Appleby & Sperling worked on the
21 segregated accounts portion of the document, so
22 that it would be compliant to the BMA.

23 Q. What's the BMA?

24 A. Bermuda Monetary Authority.

25 Q. And is Appleby & Sperling a Bermuda law

1 Porco
 2 firm?
 3 A. Yes, it's one of the premier law firms
 4 on the island.
 5 Q. Did a lot of documents and time go into
 6 the preparing of this document?
 7 A. Yes, at great expense.
 8 Q. Did a lot of time and expense go into
 9 this document to make sure it fully disclosed
 10 whatever had to be disclosed?
 11 A. Yes.
 12 Q. It says here the date of this
 13 confidential offering memorandum is July 2006.
 14 Do you see that?
 15 A. Yes. That's the date of its last
 16 revision.
 17 Q. Was it used thereafter to attempt to
 18 attract investors?
 19 A. Yes, it was.
 20 Q. And through what period of time, to the
 21 best of your recollection?
 22 A. It was continually used until the
 23 implosion of the fund being shut down from
 24 Dan's activities.
 25 Q. And am I correct that the fund was

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 1 Porco
 2 liquidated in December?
 3 A. I believe -- I'm not sure of the
 4 redemption date, the final redemption date. The
 5 fund exists as a shell entity for the time being.
 6 There's no funds in it. The shutting down of the
 7 fund forced the redemption of another investor as
 8 well in another class of shares.
 9 Q. Was that Mr. Holmstrom?
 10 A. No, Ola Holmstrom was an investor in
 11 Dan's class of shares. We had -- George can
 12 speak to the other class of shares, but once Dan
 13 had imploded Class Z, you know, it was shortly
 14 thereafter what we were trying to build in
 15 another class naturally collapsed as well because
 16 all the expenses of the fund and the entire
 17 operation was to fall upon another small start-up
 18 investor in another class of shares and they
 19 couldn't bear the burden of the entire cost.
 20 Q. Who was that?
 21 A. George can speak to that subscription.
 22 Q. Do you have any knowledge or
 23 information concerning it?
 24 A. I don't have any with me, no.
 25 Q. I mean, do you have it in your head, do

1 Porco
 2 you know who this person was?
 3 A. It was a subscription that George had
 4 worked on exclusively for a separate class of
 5 shares, and he can address it.
 6 Q. I'm sure he can. I'm asking you if you
 7 have any knowledge as to who this person is?
 8 A. No, I don't because I was no longer
 9 active as, you know, as doing administration on
 10 the fund side as a director at that point. When
 11 I was a director of the funds, I would have had
 12 all of that information.
 13 Q. When did this investor come in?
 14 A. I believe he came in a few months prior
 15 to the blowup with Dan.
 16 Q. Was this September, October?
 17 A. I can't answer that. I don't have the
 18 dates.
 19 Q. Were you still a director as of that
 20 point?
 21 A. Of the fund, no.
 22 Q. When did you resign?
 23 A. George became a director of the fund.
 24 We're not talking about the Independent Fund
 25 Limited.

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 1 Porco
 2 Q. I understand.
 3 A. Prior to Dan coming in, and that
 4 decision was made because George was more
 5 familiar with it and more active with the
 6 operations of the fund at that point, and it only
 7 made sense for -- rather than for me to act as a
 8 director over activities that he was handling, it
 9 made more sense for him to then become director
 10 of the fund since he was handling those
 11 activities for the fund.
 12 Q. Do you know this person invested in
 13 this other class?
 14 A. I don't have any of those figures.
 15 Q. Do you have any approximation of any of
 16 the figures?
 17 A. I believe it was several hundreds of
 18 thousands of dollars.
 19 Q. Incidentally, how much did you make
 20 yourself? In other words, how much in revenues
 21 did you receive in 2005?
 22 A. Very, very, very little. My offering
 23 agreement stated that in the first year of
 24 operation my salary would be 150 and then
 25 subsequent years it would be 200. The company

1 Porco
 2 was unable to pay my salary, due to lack of
 3 revenue during that time period, and even when
 4 Dan was performing well, if you look at the math
 5 of what Dan was paid per the agreement when IAM
 6 was paid when you subtract out our operation or
 7 expenses, neither George nor I could take our
 8 full salaries. So it was really just a continual
 9 effort to raise more assets for the fund which
 10 became increasingly difficult given Dan's
 11 trading.

12 Q. My question to you, how much money did
 13 you get paid by the fund and by IAM in 2005,
 14 approximately?

15 A. I don't have the figure. It's a
 16 fraction. It should be on -- didn't we submit
 17 our IAM tax returns? Weren't you given the
 18 K-1's? It should all be on there.

19 Q. I haven't seen them.

20 A. It could be looked up. I think it
 21 could be looked up and I think it was given to
 22 you.

23 Q. My question is, you are the person that
 24 got paid the money. Did you get paid more than
 25 50 grand?

1 Porco
 2 look at it.
 3 Q. I do not have a copy of the K-1. I'm
 4 not going to represent that it hasn't been
 5 produced but I haven't seen a copy of it.
 6 A. All the assets, liabilities, income,
 7 money paid to Dan, K-1's, all that stuff was
 8 handed over to you guys.

9 Q. When?

10 A. Can I talk to my own counsel about it?

11 Q. Yes.

12 MR. SEAR: I will tell you that I
 13 looked through the initial and supplemental
 14 disclosures and haven't seen it.

15 MR. LANZA: You don't have the K-1's?

16 MR. SEAR: I don't have the K-1's for
 17 IAM.

18 MR. LANZA: My understanding is you
 19 have been given it, and we also do have the
 20 K-1's and we'll check and see what we have.

21 Do you mind if we take a two-minute
 22 break?

23 MR. SEAR: No, not at all. Let's go
 24 off the record now.

25 (Recess)

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1 Porco

2 A. No.

3 Q. Did George get paid more than 50 grand
 4 in 2005?

5 A. I believe he did get more than 50
 6 grand.

7 Q. Approximately how much?

8 A. I believe he made somewhere -- I think
 9 this is prior to his expenses, I think he made
 10 somewhere around 80 or 100.

11 Q. How much did you get paid in 2006 by
 12 IAM?

13 A. I believe even less than the prior year
 14 because it was less revenue.

15 Q. And how much did George get paid in
 16 2006?

17 A. I'm not sure. It is on the K-1.

18 Q. Can you give me an approximate amount?

19 A. I don't recall what his income was that
 20 year, but it's listed in the document we gave
 21 you.

22 Q. What were the assets of IAM in 2006?

23 A. Again, it's all in the accounting on
 24 that document.

25 Do you have a copy of it? We could

1 Porco

2 EXAMINATION CONTINUED

3 BY MR. SEAR:

4 MR. SEAR: We were having an
 5 off-the-record conversation about a document
 6 that the witness looked at during his
 7 testimony here today. My understanding,
 8 based on counsel, is that it was prepared to
 9 help him in terms of his testimony. It
 10 clearly refreshed his recollection. He was
 11 looking at it right in the middle of
 12 answering a question of mine and I think I'm
 13 entitled to the document.

14 MR. LANZA: Well, I don't think we're
 15 going -- how about this? Give me some time
 16 to kind of make a decision as to talking to
 17 my client more about it.

18 I don't think we're ultimately opposed
 19 to letting you see the document, but if it
 20 is privileged, we certainly don't think the
 21 fact that he may have looked down at it
 22 would have waived any privilege, and we
 23 would make it available to you pursuant to
 24 some sort of an agreement, I don't think
 25 that's -- at the end of the day, it's not

1 Porco
 2 something we don't want to allow you to see.
 3 MR. SEAR: I will not claim there is
 4 any subject matter waiver by giving us the
 5 document.
 6 MR. LANZA: That was the concern.
 7 MR. SEAR: And if you have Bates
 8 numbers on the K-1's or any of the documents
 9 that he's referred to in terms of his
 10 financial issues, that would be very helpful
 11 if you could give me those numbers.

12 EXAMINATION CONTINUED

13 BY MR. SEAR:

14 Q. Would it be fair to say that IAM was
 15 essentially out of money by mid-2006?

16 A. Yes, except for some material, you
 17 know, small, small amounts of money, yes.

18 Q. You mentioned a RCA matter before.
 19 What was that?

20 A. That was a, it was a company that had
 21 expertise in helping to take manager information
 22 and methodology and help develop marketing
 23 materials and correspondence materials to
 24 investors, institutional investors, high net
 25 worth investors, and what they do is that they

1 Porco
 2 in that marketing attempt.
 3 Q. Did you think that RCA performed
 4 properly?
 5 A. We felt that they did not at the end of
 6 the day. However, I would say that's kind of a
 7 catch-22. Their position was if your manager had
 8 given us the information that we had asked for,
 9 we would have been able to help you. But the
 10 agreement that we had with them didn't stipulate
 11 it that way exactly.

12 So George was involved in that
 13 agreement with Dan and that agreement with RCA,
 14 and he could speak better to the issues of that.
 15 I really wasn't involved in that at all, other
 16 than trying to get Dan to fill out the
 17 information.

18 Q. I take it George asked Dan for the
 19 \$50,000 to pay to RCA?

20 A. I believe Dan offered the money to
 21 George because collectively after discussing what
 22 this company claimed it could do, Dan was
 23 interested in having them on board and assisting,
 24 and together they reached an agreement, and then
 25 Dan then forwarded \$50,000.

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 1 Porco
 2 forward a series of due diligence type questions,
 3 methodology questions, trading questions, for the
 4 manager that's trading particular methodology to
 5 get a greater understanding so that they can
 6 market, help market that manager on the
 7 institutional level.

8 And Dan and George reached an agreement
 9 amongst themselves in regards to that and then
 10 they were engaged to help carry out that activity
 11 and they forwarded a series of documents which we
 12 then tried to have Dan get him to fill out as
 13 many pages of questions. Unfortunately, Dan only
 14 answered a few of the questions in comparison to
 15 the amount of questions they were asking, and
 16 they just couldn't get enough specific
 17 information that they were looking for the way in
 18 which they market to do much good at the end of
 19 the day based on what we were able to get from
 20 Dan and from his assistant, Andrea, I believe is
 21 her name.

22 And there is correspondence regarding
 23 that where Dan was asked on more than one
 24 occasion through Andrea and directly to complete
 25 the questionnaire so that we could assist further

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 1 Porco
 2 So I don't know if it was so much
 3 George asking as much as Dan volunteering.
 4 Q. If you look back at Zanger Exhibit 3
 5 with regard to the October, 2003 agreement, page
 6 2, paragraph number 1, do you see that?
 7 A. This is 2004, page 1.
 8 Q. Page 2, paragraph number 1. The first
 9 sentence reads, "Commencing from the date of
 10 execution hereof and continuing until the
 11 termination or expiration as provided for herein,
 12 IAM grants DZ the right to manage Class Z shares
 13 within IFL upon the transfer and IFL's receipt of
 14 at least USD 5 million and up to 50 million into
 15 said Class Z shares."

16 Do you see that?

17 A. Yes, sir.

18 Q. If Dan was supposed to have an
 19 obligation to put in \$50 million, why did the
 20 agreement say up to \$50 million?

21 A. Dan wanted to put the money in over
 22 time. He didn't want to just plop the 50 million
 23 in immediately. He was trading -- from my
 24 understanding, Dan was trading a lot of his own
 25 money, many millions of his own dollars and he

1 Porco
 2 just didn't want to move it all over immediately.
 3 He wanted to move it over a period of time.
 4 Q. Is there any document that sets forth
 5 Dan's obligation to put in at least \$50 million?
 6 A. I'm not sure, other than the agreement
 7 and conversations and whatever e-mails that went
 8 back and forth between George and Dan.
 9 Q. And the agreement is the agreement that
 10 you have got in front of you, is that right?
 11 A. Yes.
 12 Q. Other than the reference to \$50 million
 13 that I just made, is there any other reference to
 14 \$50 million in this agreement?
 15 A. You are asking within this document.
 16 Is there a second mention?
 17 Q. Yes.
 18 A. I don't believe the phrase 50 million
 19 appears again, but I believe it is referenced in
 20 its intent and its meaning throughout the
 21 document.
 22 Q. Where?
 23 A. Point number 3 refers to what I had
 24 just mentioned a moment ago. Dan was going to
 25 move the \$50 million over from his other assets,

1 Porco
 2 institutional mandates to raising money.
 3 One of those mandates, very typically
 4 is that an institutional investor is not going
 5 want to be more than 20 percent into a fund. So
 6 to raise assets in a fund, let's say, you wanted
 7 to raise \$20 million, okay, or let's say \$10
 8 million or \$5 million tranches, you would have to
 9 have 25, 50, 75 and so on, in order for an
 10 institutional investor to be comfortable with
 11 that mandate that they typically have where we
 12 don't want to be more than 20 percent into your
 13 fund.
 14 Dan understood that as a prerequisite
 15 being in the business that without assets in the
 16 funds, it is very difficult to get an
 17 institutional investor by their own mandates to
 18 put money into the fund and, hence, the whole
 19 purpose of the \$50 million from the onset of the
 20 agreement it was just that Dan was going to put
 21 it in over time.
 22 And that, I mean, that's just common
 23 knowledge within the industry. That you have to
 24 have a base of assets in order to raise assets
 25 because of the institutional mandates that they

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 1 Porco
 2 and point number 3 references this personal
 3 account that he intends to continue trading that
 4 It was from that he was to move those moneys
 5 over, which were part of the discussions with
 6 George.
 7 Q. Well, does 3 have anything to do with
 8 investing 50 million?
 9 A. It references that he had these
 10 personal accounts. I'm just referring back to
 11 the source of funds from which the 50 was to come
 12 in from over time.
 13 Q. Doesn't 3 say that he is going to
 14 continue trading in his personal account?
 15 A. It does.
 16 Q. It doesn't say anything --
 17 A. We weren't asking him to completely
 18 shut down. But it was Dan's intention from the
 19 beginning to once he had the offshore exposure
 20 that he wanted to move over more and more and
 21 more of his assets to grow the fund.
 22 Understanding just the basic
 23 fundamentals of raising capital for a hedge fund,
 24 anyone who is in that business and familiar with
 25 it as Dan was, understands that there are

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 1 Porco
 2 have of not wanting to be more than 20 percent
 3 in.
 4 Q. Did Dan's desire to contribute some
 5 moneys above \$5 million to the fund create an
 6 obligation on his part to do that?
 7 A. Dan made an obligation to put the money
 8 into the fund.
 9 Q. In the agreement?
 10 A. In this agreement, it says that he will
 11 put at least 5 and up to 50.
 12 Q. Is it your testimony that that creates
 13 an obligation for him to put in 50?
 14 A. There was the understanding that that
 15 was what was required in order for the marketing
 16 of the fund to be successful.
 17 Q. And why wasn't that stated in the
 18 agreement?
 19 A. Again, this is an agreement that was
 20 drawn up by Dan and by George. You know, I
 21 guess, when one is drawing up an agreement, I
 22 guess it's like a marriage, you have to plan for
 23 divorce.
 24 The relationship was good at the
 25 beginning. The camaraderie was good at the

1 Porco
 2 beginning between George and Dan, the
 3 understandings were clear. Dan was coming in
 4 with a large amount of assets and a trading
 5 methodology.
 6 Everybody was pleased and was happy.
 7 No one foresaw a need to imagine in advance, you
 8 know, such a thing when the language and the
 9 understanding and the agreement was clear between
 10 them.

11 Q. Is there any document created in 2005
 12 in which George or you or anybody on behalf of
 13 IAM complains about the fact that Dan has not,
 14 had not contributed more than \$5 million to the
 15 fund?

16 A. I'm not sure.

17 Q. Are you aware of any?

18 A. At this time I'm not aware of any. If
 19 I went back through e-mails and saw one, I might
 20 go, oh, yeah, I remember reading that. But it
 21 would probably be a question for George.

22 Q. Let me show you what we have premarked
 23 as Zanger Exhibit 7, which purports to be an
 24 e-mail from a shareholder services specialist at
 25 Butterfield Funds Services, Bermuda Limited. Her

1 Porco
 2 George, or whether this is a confirmation that it
 3 went through George and George was just getting a
 4 confirm. I can't tell by this document.

5 Q. My question is different. Am I correct
 6 that before the \$4 million would be paid per a
 7 redemption, that IAM would have to agree and
 8 convey that agreement to Butterfield before it
 9 would be done?

10 A. The procedurally prudent thing is that
 11 is how it is handled. However, if the
 12 administrator felt that a redemption was to be
 13 carried out, even if -- they are going to go by
 14 the rules of the offering memorandum.

15 So if a redemption has to be made and
 16 they feel it is going to be made and someone
 17 doesn't want it to be made, regardless of whether
 18 it's the trading manager IAM or not, it doesn't
 19 become an issue of the trading manager. It
 20 becomes an issue of the board of directors for
 21 the fund and then they ultimately answer to the
 22 administrator, not IAM.

23 Q. And George was on the board?

24 A. George was a director, yes, sir.

25 Q. Do you know what George did in response

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1 Porco
 2 name is Lori, L O R I, Fuhrtz, F U H R T Z.
 3 (Zanger Exhibit 7 was marked for
 4 identification)

5 Q. Are you familiar with her?

6 A. I recall seeing e-mails as her being on
 7 that administrative team, yes.

8 Q. And is Butterfield Services, were they
 9 an administrator of the fund?

10 A. Yes.

11 Q. Am I correct that they took
 12 instructions from IAM?

13 A. Yes.

14 Q. You see where Ms. Fuhrtz is e-mailing
 15 George saying the date, "Mr. Szele, we received
 16 today the attached request to receive \$4 million
 17 for Class Z series 1 and 2." Do you see that?

18 A. Yes.

19 Q. And for that transfer to be made, am I
 20 correct that IAM would have to agree to the
 21 redemption?

22 A. I don't know whether Dan had a copy of
 23 a redemption request because he had a copy of the
 24 offering memorandum. I don't know if Dan
 25 forwarded this directly to them and not through

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1 Porco
 2 to receiving this e-mail, if anything?

3 A. I'm not sure. But, again, like I said
 4 before, I don't know if this is a response to
 5 George confirming it had been received or whether
 6 Dan sent this in and they were saying to George
 7 we received this redemption request from Dan. It
 8 is not clear.

9 Q. It talks about "We received today the
 10 attached request," correct?

11 A. I'm not sure whether Dan sent that in
 12 or Dan sent it to George and --

13 Q. So you don't know?

14 A. I don't know.

15 Q. But as far as you know, George didn't
 16 object, is that right?

17 A. There were instantaneous concerns about
 18 this redemption.

19 Q. I'm not asking if there were concerns.
 20 I'm asking whether George objected to the \$4
 21 million in writing?

22 A. I don't believe that he did object for
 23 the purpose of making sure for a review of the
 24 funds and a compliance to the offering memorandum
 25 that everything was being done properly. Not the

1 Porco
 2 ultimate -- I mean, at the end of the day, Dan
 3 received his redemption. So I don't follow.
 4 Q. My question is, did George do anything
 5 to object to the redemption, to your knowledge?
 6 A. I believe, yes.
 7 Q. In terms of following --
 8 A. I believe he corresponded to the
 9 administrator regarding this whole matter, yes,
 10 and there are e-mails as such to the
 11 administrator and from the administrator to
 12 George.
 13 Q. Did George say that Dan had no right to
 14 redeem the \$4 million in form or substance?
 15 MR. LANZA: I'm going to object. We
 16 went over precisely these questions before
 17 we took our break.
 18 MR. SEAR: And he couldn't tell me
 19 when, he couldn't tell me anything. So I
 20 put this in front of him in terms of the
 21 specifics of the date, and if he doesn't
 22 know something, he doesn't know. I'm trying
 23 to get his knowledge.
 24 A. I'm not sure, you know, specifically,
 25 but I know that there were communications

1 Porco
 2 associate were there for defendant Daniel Zanger.
 3 At page 7, Mr. Lanza states:
 4 "Well, your Honor, it really would just
 5 require taking a look at the e-mail
 6 exchanges from the prime broker to IFL
 7 specifically to Independent Asset Management
 8 saying you are in violation of our rules.
 9 You have done this 125 times or saying" --
 10 "The Court: Do they say that?
 11 "Mr. Lanza: They do say that. They're
 12 exchanges from a woman Giovanna Arturo who
 13 works for Goldman, Sachs who was
 14 consistently irate over these margin calls,
 15 and they were."
 16 Q. Are you aware of such e-mail exchanges
 17 from Ms. Arturo or anyone at Goldman, Sachs
 18 saying that IAM has been in violation of their
 19 rules 125 times?
 20 A. Yes.
 21 Q. Over what period of time?
 22 A. Over the period of time of the
 23 relationship that Dan mentioned Class Z.
 24 Q. So these e-mail exchanges from Goldman,
 25 Sachs would have been throughout 2005 and 2006?

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 1 Porco
 2 regarding the redemption from George to the
 3 administrator, and I'm sure he can speak to the
 4 specifics of it.
 5 Q. Do you know after the redemption was
 6 made whether there was more than \$5 million in
 7 the fund?
 8 A. There was not after the redemption was
 9 made. There was not more than \$5 million in the
 10 fund.
 11 Q. Let me show you what we have premarked
 12 as Zanger Exhibit 8.
 13 (Zanger Exhibit 8 was market for
 14 identification)
 15 Q. It purports to be an accounting report
 16 from Goldman, Sachs concerning the Class Z shares
 17 in the fund. Have you ever seen this before?
 18 A. No. These are all, this is all under
 19 the role of George's responsibilities.
 20 Q. If you look at -- fine. Are you aware
 21 -- strike that.
 22 I'm going to read to you a section of a
 23 transcript in this matter, an appearance in front
 24 of Judge Rakoff, October 4, 2007. Your counsel,
 25 Mr. Lanza, was there for plaintiff's and I and my

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 1 Porco
 2 A. The violations and the margin calls, I
 3 believe, began to escalate substantially after
 4 2005.
 5 Q. Well, my question is not when they
 6 began to escalate. It is whether the 125 times
 7 that Goldman, Sachs is saying that there has been
 8 a violation of their rules, what period of time
 9 that took place?
 10 A. I don't know. I don't know.
 11 Q. You've seen these e-mails?
 12 A. Yes, I was cc'd on some of these
 13 e-mails, and I would report them to George and he
 14 would deal with them.
 15 Q. Approximately how many such e-mails
 16 have you seen?
 17 A. At least all of the e-mails that
 18 interrupted my ability to transfer funds at the
 19 end of the month.
 20 Q. So how many such e-mails did you see in
 21 which Goldman, Sachs said that IAM had been in
 22 violation of Goldman, Sachs's rules in connection
 23 with margin calls?
 24 A. I saw at least, you know, the ones that
 25 pertained to the interruption of moving money.

1 Porco
 2 So that is at least four or five. And then I was
 3 cc'd on a number of e-mails which I read briefly,
 4 but George attended to that as is his role within
 5 the organization.

6 Q. So of the 125 exchanges you have told
 7 us about, how many did you actually see?

8 A. You mean personally?

9 Q. Yes.

10 A. In my role doing what I do in a
 11 fraction of them.

12 Q. And approximately how many?

13 A. I couldn't state. Ten or so. The
 14 ones, again, that I would see and have to
 15 immediately address are the ones that interrupted
 16 some activity that I was doing for my job.

17 Q. And these took place in 2005 and 2006?

18 A. I believe he disrupted the fund once
 19 before earlier. I think he did disrupt the
 20 operations in 2005 and then repeatedly disrupted
 21 them in 2006.

22 Q. I show you Zanger Exhibit 9 and ask you
 23 if you can identify that.

24 (Zanger Exhibit 9 was marked for
 25 identification)

1 Porco
 2 A. You'll have to ask George the specifics
 3 on that decision. It was a small amount, as I
 4 referenced earlier, that at that point it became
 5 clear what was going on and what Dan was doing in
 6 terms of trying to implode the fund.

7 Q. By April of '06 it was clear he was
 8 trying to implode the fund?

9 A. As the margin calls continued to
 10 increase and Dan had been advised not only by
 11 George but the administrator and the custodian
 12 not to do this anymore, and Dan continued to do
 13 it deliberately, what else might we conclude?

14 MR. SEAR: Read back that answer.
 15 (Answer read)

16 Q. Let's pick September of '06. As of
 17 September of '06, had Dan been advised by the
 18 administrator not to do it anymore?

19 A. I don't know the dates but the
 20 administrator on more than one occasion had
 21 instructed him not to do what he was doing.

22 Q. Can you --

23 A. As well as Gia at Goldman.

24 Q. Can you tell me the year?

25 A. Both in 2005 and in 2006 Dan was given

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1 A. Yes. This was sent to Dan, I believe,
 2 to his accountant and to Dan as a summary.

4 Q. Why wasn't there any reference in this
 5 letter to your position that Dan had violated the
 6 agreement in 2005?

7 A. It wasn't my role to do that. It was
 8 just simply to communicate to Jeff where we stood
 9 as far as what moneys were paid out to Dan. It
 10 just wasn't part of this letter.

11 Q. Why did IAM pay performance fees and
 12 management fees to Mr. Zanger for 2005 and 2006
 13 if he was in violation of the agreement?

14 A. Because Dan was owed this money per the
 15 contract. We paid what he was owed.

16 Q. And so your position that he was in
 17 violation of the agreement, that did not give IAM
 18 a right to withhold any moneys, is that right?

19 A. It wasn't a question of giving IAM a
 20 right to withhold anything, IAM paid Dan the
 21 moneys it was owed and paid Dan what was able to
 22 be paid. If there was no money to pay, there's
 23 no money to pay.

24 Q. Why didn't you pay his portion of the
 25 management fees after April of '06.

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1 such correspondence. In 2006 he began to do it
 2 more and more frequently, which never really made
 3 much sense other than he wanted to get out of the
 4 agreement and was looking for a way to do it.

6 Q. In 2006 did Dan cover one margin call
 7 with his own funds?

8 A. Inappropriately, Dan tried to wire
 9 money into the fund, into the custodial account
 10 at Goldman directly, without wiring the money,
 11 you know, advising us and wiring the money as a
 12 subscription to the fund. He circumvented the
 13 fund, the board of directors and George and sent
 14 money directly into Goldman.

15 We found out about this after the fact
 16 and what alerted us to all of this was that Dan
 17 then after covering the call tried to wire money
 18 directly out of the fund to himself, at which
 19 point the custodian caught it and said, we're not
 20 going to allow you to wire money out to yourself.

21 For some reason the custodian allowed
 22 the money to come in. I guess they viewed that
 23 as not so risky but they did catch the fact that
 24 he was trying to wire money out of the fund which
 25 is totally prohibited in the agreement, not only,

1 Porco
 2 you know, of the offering memorandum, but in the
 3 contract with Goldman that, you know, he didn't
 4 have the authority to do that and he knew he
 5 didn't have the authority to do that and he tried
 6 to do it anyway and then it was stopped.

7 This was just one more of these major
 8 issues that the relationship had now begun to
 9 deteriorate and that Dan was kind of a loose
 10 cannon.

11 Q. Your testimony is that the payment to
 12 Dan was stopped?

13 A. Dan wired money into Goldman. Goldman
 14 allowed that. Then once the margin call was
 15 clear, Dan then, without notifying us, without
 16 notifying the trading manager, without notifying
 17 the administrator, without asking for a
 18 redemption request, took it upon himself to send
 19 in a request to Goldman to try to wire money out
 20 of the fund to himself personally, not -- I mean,
 21 on so many levels this is crazy.

22 If he wanted a redemption and was going
 23 to try to force a redemption, it would have at
 24 least had to have gone for a redemption request
 25 and then when it wouldn't go to Dan Zanger

1 Porco
 2 trading manager and we all sat back and took a
 3 deep breath and said, "Oh, my god, what the hell
 4 is going on here?"

5 Q. My question is, is it your testimony
 6 under oath that eventually the payment wasn't
 7 made to Dan?

8 A. Eventually, the payment was released to
 9 Dan through a proper redemption process with
 10 regard to the funds rule which we had to go back
 11 to the administrator and deal with a nightmare of
 12 a situation.

13 I believe the accommodation of that
 14 wire going back out was then handled with a
 15 redemption request the proper way and --

16 Q. So the payment was made?

17 A. The redemption was -- the redemption
 18 occurred, again, violating the contract.

19 Q. So the fund consented to a violation of
 20 the contract?

21 A. The fund didn't consent to anything.
 22 We were talking about two separate entities with
 23 two separate responsibilities.

24 Q. Your testimony is the fund didn't
 25 consent to the redemption?

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 1 Porco
 2 personally it would have gone to the company that
 3 Dan had put his money in through this offshore
 4 company, so he completely circumvented everybody
 5 and tried to willy-nilly pull his money back out
 6 of a fund regulated by the Bermuda Monetary
 7 Authority, which was outrageous.

8 Q. Then what happened?

9 A. What happened was, we were notified
 10 that it occurred. The administrator was furious,
 11 I was furious, George was furious, Dan was
 12 contacted, tensions flared.

13 Q. And then what happened?

14 A. George handled the matter from that
 15 point forward and communications and
 16 conversations with Dan. So I'm not entirely
 17 privileged to what else was said or happened.

18 Q. So you don't know what happened?

19 A. In that regard. He was stopped. Dan's
 20 attempt to take money out of the fund to wire
 21 back to himself was stopped.

22 Q. So there was no money paid to Dan?

23 A. His attempt to wire the money
 24 personally was stopped by the custodian. The
 25 administrator was notified, who then notified the

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 1 Porco
 2 A. I can't speak to what the fund
 3 consented to or didn't consent to. George can
 4 speak to that as a director of the fund. I'm,
 5 you know, doing administrative work for the
 6 trading manager.

7 Q. The trading manager is IAM, right?

8 A. The Independent Fund Limited is the
 9 fund and this was a fund matter in which George
 10 is a director and which George can address.

11 Q. Were there conversations in or around
 12 September or October that IAM did not have enough
 13 money to operate?

14 A. Conversations with who?

15 Q. George.

16 A. Between George and who?

17 Q. And you.

18 A. We knew what our situation was
 19 continually, how much money we had because we
 20 were getting so little in salaries. So I mean,
 21 we were always aware of how much money we did or
 22 did not have.

23 Q. Well, were there conversations in or
 24 around August, September or October in 2006 to
 25 the effect that IAM did not have enough money to

1 Porco

2 continue to operate?

3 A. IAM was getting by and continuing to
4 operate and we were continuing to try to market
5 up until the point that we could no longer market
6 Dan.

7 Q. I'm not asking you about marketing Dan.
8 I'm asking you whether in August, September and
9 October there were conversations between you and
10 George to the effect that IAM did not have enough
11 money to continue to operate?

12 A. No, because we were going to continue
13 to raise assets either for Dan or from other
14 classes of shares.

15 Q. To your knowledge, was Dan told in or
16 around August, September, October that IAM did
17 not have enough money to pay its bills?

18 A. Not by me.

19 Q. Did IAM have enough money to pay its
20 bills during the months of August, September and
21 October.

22 A. IAM had been paying their bills.

23 Q. I'm not asking you what they had been
24 doing, I'm asking you during the months of
25 August, September and October if IAM had enough

1 Porco

2 transcripts that show the monthly reportings, so
3 it would show a list of when the last payment was
4 made, it would be in there, and I believe you
5 have that.

6 MR. SEAR: Has that been produced to
7 us?

8 MR. LANZA: I believe so. We don't
9 have everything from Butterfield.

10 THE WITNESS: You have all that stuff,
11 I think.

12 MR. SEAR: I would either ask for the
13 production or I would ask for the Bates
14 numbers, please.

15 THE WITNESS: I mean, it lays it all
16 right out. Everything is very transparent.
17 I mean, that's one of the reasons why we set
18 up in Bermuda. We worked with a group like
19 Butterfield Fund Service, had an auditor
20 like D&T, worked with Appleby Sperling and
21 had a legal team like Williams Mullen.
22 Everything was always very transparent. The
23 accounting was always done correctly and
24 then reviewed by the auditors.

25 So whatever these figures are and you

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1 Porco

2 even to pay its bills?

3 A. Yes, IAM had enough money to pay its
4 bills.

5 Q. During those months it did pay those
6 bills?

7 A. Things were lean but we were continuing
8 to meet our obligations.

9 Q. In connection with liquidation of the
10 fund, how much money did AIM get paid?

11 (Telephone interruption)

12 A. IAM didn't get paid in regards to Dan's
13 redemption.

14 Q. In connection with the liquidation in
15 or around December of 2006, did IAM get any
16 money?

17 A. IAM didn't get revenue -- Dan was given
18 back the money that was his. Some portion was
19 retained per the offering memorandum by the
20 administrator and there was no gain to IAM.

21 Q. Was IAM paid a management fee for
22 December of 2006?

23 A. I don't know what the cutoff dates
24 were, but the history of the management fees
25 which were paid are all in the Butterfield

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1 Porco

2 are looking for should all be available for
3 you guys to see what was paid and when.

4 Q. Let me show you what we have marked as
5 Zanger Exhibit 10.

6 (Zanger Exhibit 10 was marked for
7 identification)

8 Q. This is a letter to Mr. Steven Schulman
9 who was and is counsel for Mr. Zanger and to Mr.
10 Lanza, your counsel. Have you seen this letter
11 before?

12 A. I don't know if this was forwarded just
13 to George or whether I received a cc on this.

14 But this would have come through our law firm. I
15 think you sent it just to George.

16 Q. Do you have any knowledge as to whether
17 or not this letter was responded to?

18 A. Is this the lawyer that Dan had prior
19 to you, the guy that got in all the trouble and
20 he had to fire him?

21 Q. That's not correct what you just said,
22 but he is the lawyer that was representing Dan
23 during this period of time.

24 A. I'm not familiar with this letter.

25 Q. You don't know whether there was a

1 Porco
 2 response to it or not?
 3 A. No, I don't know.
 4 Q. And you wouldn't know how we would go
 5 about getting an answer to these questions in the
 6 letter, questions concerning various expenses and
 7 items and so forth?
 8 A. I think George responded with a lengthy
 9 response to this guy through the firm, did he
 10 not?
 11 Q. So you think George responded to this?
 12 A. I'm not sure. I'm not sure. I don't
 13 remember -- what I remember is also hearing this
 14 guy Schulman was, got in trouble with the bar and
 15 he was off the team, and Dan is now looking for
 16 another lawyer, and it just stalled any attempt
 17 to discuss things with Dan. So I don't
 18 remember --
 19 Q. You don't know whether the next thing
 20 that happened after this was the filing of the
 21 complaint?
 22 A. I don't know.
 23 Q. Is IAM an active company today?
 24 A. IAM and the fund are basically in a
 25 dormant state.

1 Porco
 2 AFTERNOON SESSION
 3 1:15 p.m.
 4 MR. SEAR: Let's mark this document as
 5 Exhibit 11. If we could have marked as
 6 Zanger Exhibit 11 a one-page document that
 7 was provided to me just now by counsel for
 8 the witness. It's the document that the
 9 witness was looking at in connection with
 10 his testimony.
 11 (Zanger Exhibit 11 marked for
 12 identification)
 13 EXAMINATION CONTINUED
 14 BY MR. SEAR:
 15 Q. Let me ask you, sir, do you have any
 16 other notes with you today that you have used in
 17 connection with your testimony here today?
 18 A. No. I was looking to see if there was
 19 a date on the last thing. That was something
 20 that I sent to these guys.
 21 Q. And could you tell us what this
 22 document is?
 23 A. It lists the seed unit loans to IAM and
 24 it lists loans that were made to the company. So
 25 I thought maybe there was a column that had a

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 1 Porco
 2 Q. And when did they become dormant?
 3 A. Shortly after the redemption of the
 4 last class of shares that redeemed as a
 5 consequence of Dan's actions.
 6 Q. When was that?
 7 A. I don't have that date but George will
 8 have it for you.
 9 MR. SEAR: Let's take a break.
 10 (Luncheon recess: 12:41 p.m.)
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 1 Porco
 2 date, and you had asked me when was the last loan
 3 made, and that's why I looked at it. I don't
 4 have that in the column.
 5 Q. The reference here to seed unit, what
 6 does that refer to?
 7 A. What that is, is those are individuals
 8 that lent money to IAM in return for a portion of
 9 profits should there be any some day.
 10 Q. And the loans were from whom?
 11 A. Primarily friends and family.
 12 Q. And then there's reference to "Joe,
 13 unpaid vendor's debt." What does that refer to?
 14 A. What I had been asked for is, you know,
 15 what are some of the things that have occurred,
 16 you know, beyond the damages to the company,
 17 beyond the damages to investors, what are some of
 18 the repercussions that occurred to you over this
 19 period of time and that's just a list of some
 20 dollar amounts of vendors that I have that's
 21 accumulated that remains a debt that I had
 22 personally because of not getting revenue stream
 23 from IAM.
 24 Q. And is depleted savings, savings that
 25 you used up because of that?

1 Porco
 2 A. Savings that had been used over time,
 3 yes.
 4 Q. And the equity line, is that the same
 5 thing?
 6 A. Yes. Money I borrowed against my home.
 7 Q. And the spouse credit card?
 8 A. Well, money my spouse and I borrowed
 9 against her home, I should say.
 10 Q. And the spouse credit card charges, is
 11 that the same thing, your wife spent money on her
 12 credit card?
 13 A. Yes, she dipped into her own card to
 14 pay bills.
 15 Q. What's "Joe's personal loan to his
 16 mother"?

17 A. That's additional money that I borrowed
 18 from a relative just to have, you know, funds to
 19 continue to pay my personal obligations.

20 Q. So it is a loan from your mother?
 21 A. From my mother to me, yes.
 22 Q. It just says to, but you mean it's
 23 from?
 24 A. Yes.
 25 Q. Do you recall any conversations that

1 Porco
 2 get ahold of him, where is he? Can you try to
 3 reach him?"
 4 I tried a couple of times to put calls
 5 in to Andrea, and I don't know if her name is
 6 pronounced Andrea or Adrianna. I do remember him
 7 dialling back on one occasion and saying it is now
 8 being taken care of.
 9 Q. Have you now told us, to the best of
 10 your recollection, the substance of what you said
 11 to him and he said to you in 2006 concerning his
 12 trading?
 13 A. Again, it was not my role to talk to
 14 Dan about his trading, it was George's.
 15 Q. Could you tell us what your educational
 16 background is?
 17 A. Certainly. High school graduate,
 18 college, insurance background, numerous insurance
 19 designations, experience, you know, to the fund
 20 level with auditing, you know, handling the audit
 21 for D&T, the audit that was requested by the NFA;
 22 no graduate school.
 23 Q. And where did you go to college?
 24 A. Southern Connecticut State University,
 25 Sacred Heart University in Charter Oak,

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 1 Porco
 2 you personally had with Dan Zanger concerning any
 3 violations of the contract in 2005?
 4 A. Not in 2005. I don't.
 5 Q. Do you recall any conversations with
 6 Mr. Zanger in 2006 concerning the issue of
 7 violations of the contract?
 8 A. I communicated by phone message trying
 9 to reach him several times. On one occasion when
 10 we could not process the month-end reporting
 11 transfer of funds, I left messages for his
 12 assistant, I believe her name is Andrea.
 13 I think on one occasion Dan called back
 14 and I think I spoke to him and said, you know,
 15 Dan, this has interfered with the transfer. It's
 16 on a margin call. He was -- I believe he said
 17 it's being taken care of. That's the extent of
 18 my conversation.
 19 I didn't speak with Dan very
 20 frequently. George did.
 21 Q. To the best of your recollection, you
 22 told us totally the conversations you had with
 23 him in 2006 concerning his trading?
 24 A. It wasn't my role, so, no. Just on one
 25 occasion, you know, George was saying, "We got to

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 1 Porco
 2 Connecticut.
 3 Q. Did you graduate from Sacred Heart?
 4 A. No, I did not graduate. I have a
 5 double major in English and psych and have, I
 6 believe, two class credits to receive a BS.
 7 Q. You referred to the NFA. What were you
 8 referring to?
 9 A. National Futures Association.
 10 Q. The D&T, is that Deloitte Touche?
 11 A. Yes, sir.
 12 Q. And what were you referring to?
 13 A. You were asking about educational
 14 acumen, and I guess as a testimony to that I
 15 handled that audit, but I'm not a CPA.
 16 Q. You handled the audit on behalf of who?
 17 A. Independent Asset Management.
 18 Q. In other words, you worked with
 19 Deloitte Touche on the audit?
 20 A. KPMG was the auditor at that point in
 21 time and also for the administrator, but
 22 primarily it was my role to take IAM through that
 23 audit which was five officers of the NFA who come
 24 to your office, I think, it was three business
 25 days and, you know, handle the audit and we

1 Porco
 2 passed the audit and it was acceptable, and it is
 3 no small undertaking.
 4 Q. When was this, what year?
 5 A. This was 2003, I believe.
 6 Q. And when did you first start working
 7 with IAM?
 8 A. The very end of 2000, we began, George
 9 and I began in 2001, I believe we were up and
 10 running.
 11 Q. Other than IFL, is there any other fund
 12 that IAM has been involved with?
 13 A. There was an initial interest
 14 enlargement, a fund called IAM Global and that
 15 fund was never funded. It was going to be part
 16 of a package deal with another investment manager
 17 but that didn't turn out to get funded. So
 18 Independent Asset Management launched the
 19 Independent Fund Limited with Bermuda and that
 20 was the fund that began to be funded.
 21 Q. When was that funded approximately?
 22 A. This initial offering memorandum goes
 23 back. It states the incorporation date. It was
 24 shortly thereafter, May 31, 2001, is on page 4 of
 25 the offering memorandum. Several months later

1 Porco
 2 fund that was in there ultimately redeemed.
 3 Q. And when did they redeem?
 4 A. I don't know that date.
 5 Q. Do you have the year?
 6 A. I think they redeemed sometime late
 7 '04.
 8 Q. Other than that \$5 million investment,
 9 were there any other investments in IFL before
 10 Mr. Zanger?
 11 A. There were. With this, there were
 12 other funders, a fund to fund that subscribed, a
 13 couple of high net worth individuals that were
 14 offshore investors as well.
 15 Q. What was the volume of those
 16 subscriptions or investments?
 17 A. I think somewhere in total with all
 18 that was placed with Sea Carriers from all
 19 sources was somewhere around \$10 million or so.
 20 Q. What's the relationship or what was the
 21 relationship between Sea Carriers and IAM?
 22 A. Sea Carriers was an investment manager,
 23 similar to the relationship with Dan as an
 24 investment manager. They managed a class of
 25 shares.

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 1 Porco
 2 the fund was funded with its first subscription.
 3 Q. And what was the size of that
 4 subscription?
 5 A. I believe that subscription was \$5
 6 million.
 7 Q. And who put that money in?
 8 A. That was put in from an ERISA plan, a
 9 pension plan.
 10 Q. And what happened with that investment?
 11 A. Ultimately what happened was after a
 12 period of time Sea Carrier's Limited Partnership
 13 became the trading manager and then the issues
 14 that occurred with the SEC finding that the New
 15 York Stock Exchange failed to regulate the
 16 specialist firms, and specialist firms failed to
 17 regulate the specialists, Sea Carriers was caught
 18 in the cross hairs of that and they were the
 19 trading manager.
 20 So for a long period of time we weren't
 21 able to determine what was causing the lack of
 22 positive performance but it was also determined
 23 that it was specialist fraud. So without that
 24 positive performance, slowly investors began to
 25 redeem over time and precision in the pension

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 1 Porco
 2 Q. So did they have an agreement with IAM
 3 to manage this class of shares?
 4 A. There was an agreement with the fund,
 5 Sea Carriers being an entity, had its own
 6 subscription document, so the fund was able to
 7 take a stake in the limited partnership of Sea
 8 Carriers' trading operation.
 9 So unlike appointing Dan a manager and
 10 him being in the venture that he was with us,
 11 this is different. This is the fund selecting
 12 another -- almost like a fund-to-fund sort of
 13 relationship.
 14 Q. And what was the overall performance of
 15 Sea Carriers?
 16 A. Prior to the period of time of the
 17 fund's investments going into Sea Carriers, the
 18 performance was very good, hence, the decision to
 19 place, you know, funds with them by the fund and
 20 any investors of the fund, but shortly thereafter
 21 was when the bulk of the specialists fraud began
 22 to occur. Of course, we didn't know that for
 23 quite sometime.
 24 It was finally discovered that it
 25 wasn't that the model wasn't working, it was that

1 Porco
 2 people down on Wall Street were committing fraud.
 3 Q. So what was the end result in terms of
 4 the performance of Sea Carriers?
 5 A. It was flat and slightly down.
 6 Q. Over the entire period?
 7 A. Yes, just not good enough for people to
 8 stay in, you know.
 9 Q. And how did IAM fund itself from '01 up
 10 through the end of '04?
 11 A. We had seed unit participation. We
 12 borrowed money. There were some remainderment
 13 trading that was going on and we, basically, we
 14 didn't take large salaries, you know.
 15 Q. In terms of revenues, earned revenues,
 16 what money did IAM make from '01 up to the end of
 17 '04?
 18 A. You would have to look at the K-1's and
 19 the tax returns. I couldn't tell you.
 20 Q. Can you give me an order of magnitude?
 21 A. No, I couldn't from recollection.
 22 Q. Was it more than \$200,000 over that
 23 period of time?
 24 A. I'm not certain.
 25 Q. Was it over 400,000?

1 Porco
 2 A. Not without looking at the tax returns.
 3 Q. Did you work full time for IAM from '01
 4 up until the end of '06?
 5 A. Yes.
 6 Q. And did George?
 7 A. Yes.
 8 Q. So we're clear, other than the
 9 remainderment trading you talked about, was there
 10 any other revenue from 2001 to 2004? I'm
 11 contrasting from earned revenue other than seed
 12 revenue or from loans?
 13 A. I'm not sure what the figures are that
 14 came from the fund versus the breakdown of seed
 15 and loan. But we were in a situation where
 16 capital was tight and the venture formed with Dan
 17 was addressing the goals of the fund going
 18 forward. And that's one of the reasons why he
 19 brought some capital in knowing what the goals
 20 and the plans and the future of the fund and what
 21 the circumstances were. So no surprise that
 22 there wasn't a lot of money there.
 23 Q. From '01 up through the end of '04, did
 24 IAM in terms of earned revenue exceed \$50,000 in
 25 any one year?

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 1 Porco
 2 A. I'm not certain what the figures say,
 3 but it is in the documents.
 4 Q. This would be in the K-1's for IAM?
 5 A. Yes, all the tax returns.
 6 Q. What's this remainderment trading you
 7 are talking about?
 8 A. I believe that there was a class of
 9 shares, a second class of shares that was still
 10 active other than the class that Sea Carriers was
 11 in that was being traded.
 12 Q. IAM received some kind of fee out of
 13 that trading?
 14 A. Right. There's always a fee. It is a
 15 question of how the fee is shared and in the case
 16 of Dan it was shared with Dan.
 17 Q. And how much, approximately, did IAM
 18 make out of this remainderment trading you are
 19 referring to?
 20 A. I'm not certain.
 21 Q. Was it over \$100,000?
 22 A. I don't know.
 23 Q. So as you sit here now, can you tell me
 24 even approximately how much earned revenue IAM
 25 had from '01 to '04?

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 1 Porco
 2 A. I believe so.
 3 Q. Did it exceed \$100,000 in earned
 4 revenue in any one of those years?
 5 A. Other than what --
 6 Q. No. My question is -- I'm putting
 7 aside investment money, seed money and loans, I'm
 8 focusing on earned revenue, and my question to
 9 you is, from '01 through the end of '04, did IAM
 10 have earned revenue in excess of \$50,000 in any
 11 one of those years?
 12 A. Again, the tax returns will address
 13 that. I don't know from memory.
 14 Q. When you first started talking with
 15 Dan, had the subscription and investment that had
 16 previously been made, had that been withdrawn?
 17 A. The way you phrased that question is
 18 unclear to me.
 19 Q. You started talking with Dan sometime
 20 in '04?
 21 A. Remember, this is George talking with
 22 Dan, not Joe.
 23 Q. Okay. And as of that point in time,
 24 was there any money invested in the fund when
 25 George first started talking with Dan?

1 Porco

2 A. I think there was a period of time
3 between the last redemption and Dan's
4 subscription where there was no money temporarily
5 in the fund in Dan's case.

6 Q. What type of insurance did you work in?

7 A. I had life, health insurance, did some
8 disability work, life insurance work, did some
9 pension work.

10 Q. Did you work in the securities area at
11 all with funds, or otherwise, prior to becoming
12 involved with IAM?

13 A. Yes.

14 Q. And what was that?

15 A. I was a registered rep with Phoenix
16 Equity Planning Corporation.

17 Q. For how long?

18 A. Several years. It was also a
19 requirement if you were a career agent, at that
20 time, on their career program that you become a
21 licensed PEPCO. And so I was.

22 Q. And what was your work with them?

23 A. With Phoenix early on I did a lot of
24 early pension work, and also some insurance work
25 associated to that, and I did fairly well with

1 Porco

2 than the other class of shares which remained a
3 little bit longer and then they redeemed.
4 The fund then going dormant still
5 required attentiveness for a number of different
6 reasons and communications to counsel and the BMA
7 and filing forms and, you know, so on. The fund
8 needs to remain an existing entity.

9 Q. But it was dormant after December of
10 '06?

11 A. Dormant after the last redemption which
12 I don't have the date of. But it followed
13 shortly after Dan's redemption.

14 Q. Was that Holmstrom or the other
15 investor?

16 A. That's the other investor. Holmstrom
17 was in the class of shares that Dan was managing.

18 Q. Has Holmstrom ever asserted any sort of
19 claim against IAM with respect to any kind of
20 alleged wrongdoing?

21 A. No.

22 Q. Has it asserted any claim at all
23 against IAM?

24 A. Not against IAM, no.

25 Q. If you look at Zanger Exhibit 2, the

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1 Porco

2 that. Received a number of accolades and
3 national awards with Phoenix.

4 Q. How old are you?

5 A. I am 46 now.

6 Q. And what business activities have you
7 been involved in since December of 2006?

8 A. Insurance, selling some insurance when
9 I can.

10 Q. And what type of insurance?

11 A. Some annuity work, some long-term care
12 work, not much of it is what I can -- I pretty
13 much became disengaged from all activity when I
14 came into the fund relationship.

15 So now it is very difficult because I
16 don't have, you know, the marketing irons in the
17 fire, so to speak, relationships. There's no
18 marketing -- no money for marketing. So it's
19 kind of word-of-mouth referrals, kind of slow
20 going and I'm trying to sell insurance, again, as
21 a backup to pay the bills at home.

22 Q. Did the business activities of IAM
23 cease after December of '06?

24 A. No, I would say that they didn't cease.

25 The trading of money upon Dan's exit ceased other

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1 Porco

2 '05 IAM financial statement, page 4, do you see
3 the performance fee listed there of \$775,264?

4 A. Yes.

5 Q. Am I correct that IAM was paid 25
6 percent of that or retained 25 percent?

7 A. That should be accurate, yes.

8 Q. And that fee is calculated based upon
9 the profits that Dan generated in his trade,
10 correct?

11 A. It was whatever the gains were, you
12 know, that was what the 2 and 20 charge to the
13 fund management fee and then performance fee and
14 then he would get 75 percent of the performance
15 fee.

16 Q. And if you would look at page 3 of
17 Zanger Exhibit 1, the 2006 financial statement,
18 page 3.

19 A. Okay, page 3.

20 Q. Do you see the performance fee listed
21 there of \$137,489.

22 A. Yes.

23 Q. Am I correct that IAM was paid 25
24 percent of that performance fee?

25 A. It should have been, yes.

1 Porco

2 Q. And to the best of your recollection or
3 understanding, was it?

4 A. I believe so.

5 Q. I am going to show you what we
6 premarked Zanger Exhibit 12, a series of e-mails
7 to and from what appears to be Mr. Porco and Mr.
8 Szele, from March 30, 2007 up through April 1,
9 2007.

10 (Zanger Exhibit 12 was marked for
11 identification)

12 MR. SEAR: Here's a copy for counsel.

13 Q. Take your time to look at this, and my
14 question is, is this in fact a series of e-mails
15 back and forth between you and Mr. Szele?

16 A. It appears to be.

17 Q. If you look at the first e-mail, is
18 that a copy of an e-mail you sent to Mr. Szele at
19 approximately 2:53 p.m. on March 30, 2007?

20 A. Yes, that was from me.

21 Q. And you state in the e-mail, in part,
22 "You're twisting of my statement is ridiculous.
23 I said if you handled this matter in an
24 inappropriate way, contrary to what my counsel
25 told me is legal and proper, you would give me no

1 Porco

2 A. I think this was an individual who was
3 interested in some other sort of forward
4 scenario, instead of keeping the fund dormant and
5 just going dormant, my concern was that the fund
6 should stay dormant because it potentially could
7 receive part of the award that may one day be
8 forthcoming from Sea Carriers and other people's
9 feeling was, no, let's continue on and rather
10 than keep it dormant, that way let's, you know,
11 role it into some other business venture.

12 And I felt that that would be too
13 cumbersome. I wanted to keep things, you know,
14 isolated, unencumbered with new parties coming
15 in. But it got heated. I don't know how -- this
16 obviously must have got transferred in a batch of
17 e-mails by accident.

18 Q. Is there a claim against Sea Carriers?

19 A. No. Sea Carriers has a claim against
20 specialist firms.

21 Q. And how would IAM participate in that?

22 A. Well, the Independent Fund Limited, as
23 Dan knew, coming into this venture was damaged
24 when Sea Carriers was damaged because all of that
25 missed performance that Sea Carriers was involved

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1 Porco

2 option but to take action against you and John."

3 Do you see that?

4 A. What paragraph?

5 Q. It is on the second to last page of the
6 document. The e-mail chain goes in reverse
7 chronological order. Bates number 4896.

8 A. You are on the second page from the
9 last?

10 Q. Yes.

11 A. What is the question?

12 Q. I read the first two sentences into the
13 record. My question to you is, you refer to
14 "you're twisting of my statement is ridiculous."
15 What statement are you referring to?

16 A. I have no idea. I would have to go
17 back and reconstruct what all the banter was
18 about. It was obviously personal e-mails between
19 George and I, probably over a heated argument.

20 Q. What was the heated argument about?

21 A. I don't recall. I would have to go
22 back and think about it.

23 Q. There's reference here that "you would
24 give me no option but to take action against you
25 and John." Who is John?

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1 Porco

2 in was not able to realize, cost Sea Carriers
3 millions of dollars in investment returns because
4 then investment returns for the fund, Dan knew
5 coming in as part of his interest as well was,
6 hopefully, to benefit from that coming to
7 fruition at some point.

8 Q. And how might the fund participate in
9 any recovery that Sea Carriers might make?

10 A. Because the fund, if Sea Carriers, for
11 instance, received -- well, hopefully, it's when,
12 because the damages in the fraud is established
13 by the SEC and the New York Stock Exchange. I
14 mean, there's no question that the fraud
15 occurred.

16 The question is, it's a matter of
17 damages in the legal process. At some point Sea
18 Carriers should be reimbursed for its losses.

19 The Independent Fund Limited, as a
20 member of that limited partnership, with the
21 capital that it had in Sea Carriers being traded
22 is entitled to a pro rata share that should come
23 back to the fund. Hence, the importance of
24 keeping the fund dormant, you just can't shut the
25 fund down because eventually that could take

1 Porco
 2 years but, eventually, that should all iron out,
 3 and then there will be revenue that will come
 4 forward into the fund, which would then be
 5 disbursed to the investors of the fund that were
 6 in those shares at that point in time, but
 7 there's still a management fee that's entitled to
 8 be taken and that amount would be a large amount
 9 of money.

10 Q. That management fee would go to IAM?

11 A. So that e-mail you are reading, it was
 12 an argument over should the fund be dormant,
 13 should we do something else and what else should
 14 we do.

15 We got a guy at home with two babies
 16 and one on the way, you got me at home with my
 17 situation, et cetera, and things start to get
 18 heated and there was some banter. But it is not
 19 full disclosure of the reality of the parties,
 20 but just private banter between George and I.

21 Q. Who was the individual with the two
 22 babies at home?

23 A. George, two little ones and a baby on
 24 the way.

25 Q. What was the entity again?

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 1 Porco
 2 A. Sea Carriers.

3 Q. Did the problems that Sea Carriers had
 4 hurt the reputation of the fund?

5 A. Well, I mean, people redeemed, so I
 6 would have to say that's the consequence. Should
 7 we be vindicated and a large award came through,
 8 the same investors will be singing our praises,
 9 because we find the prudent man rule and pursued
 10 what we had to pursue, kept our ducks in a row
 11 and filed what we had to file and went after
 12 damages on behalf of those investors.

13 Q. But as of '03 and '04, would it be fair
 14 to say that the fund's reputation had been
 15 damaged because of what happened?

16 A. No, you have to look at it as you have
 17 a manager managing a class of shares and that
 18 manager's investment methodology is interrupted,
 19 you know, his trading performance is interrupted
 20 because someone is committing a crime. That's
 21 not the fault of the fund. However, an investor
 22 in the fund is looking for one thing. They are
 23 looking for performance. And if they don't
 24 achieve that performance, they will look for that
 25 performance somewhere else. No one sued us,

1 Porco
 2 nobody has come after us, no one has complained
 3 or filed complaints against us.
 4 We've always done the very best we can
 5 to do what's right, to remain transparent, to
 6 address concerns when they arose and to do things
 7 appropriately, to be procedurally prudent.
 8 Q. I'm not asking if anything that was
 9 done was wrong or whether it was fair or not, I'm
 10 just asking whether the fund's reputation was
 11 hurt by what happened.

12 A. Well, you know, it's tough to continue
 13 to market Sea Carriers but it is not impossible
 14 to, if you brought in another manager as we did
 15 with Dan, that had the person's history that he
 16 had and struck the type of an agreement and
 17 relationship that we did strike with him, now you
 18 have a different opportunity and it's a
 19 completely different story and explanation and
 20 marketing pitch to put out there in the
 21 community.

22 So they are very separate things. But
 23 could you continue to market Sea Carriers? No,
 24 Sea Carriers couldn't continue to market itself.
 25 The fund was not destroyed by Sea Carriers, but

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1 Porco
 2 the damages to our, what otherwise would have
 3 been our income had we been given the darn money
 4 we were entitled to to begin with on a personal
 5 level was tremendously damaging because that's
 6 money we didn't get to enjoy which we otherwise
 7 should have received.

8 Q. What happened with Sea Carriers and the
 9 result of the fraud that you talked about? My
 10 question to you is very simple: Did that have an
 11 impact on the reputation of the fund?

12 A. You would have to say yes, I mean.

13 Q. Let's look at – who is the John you
 14 are referring to in these e-mails?

15 A. That was a colleague of George's.

16 Q. Do you recall his last name?

17 A. I don't at this time. You've got to
 18 remember all of this is going back months and
 19 months and months ago.

20 Q. There's a reference to McCorvey. Do
 21 you know who that was?

22 A. Yes, John McCorvey is somebody we
 23 worked with.

24 Q. What was his role with this?

25 A. He was also involved in part of the

1 Porco

2 introduction relationship to Butterfield
3 initially. I'm not sure of all of his other
4 involvements.

5 Q. Now, there's reference in a March 31,
6 2007 e-mail at 10:33 a.m. from you to George.
7 "George another ridiculous comment from you. I
8 understand that you are frightened now that IAM
9 is out of money. Tell it to Congressman Shays
10 when we meet."

11 What were you meeting with Congressman
12 Shays about?

13 A. The congressman, us being constituents,
14 was willing to hear what our circumstances were
15 pertaining to Sea Carriers and how Sea Carriers
16 was hurt. The SEC had collected a large amount
17 of fines against these specialist firms and our
18 attorney, which was Tom McVeigh, had assisted us
19 in writing our appeal to the SEC to ask for our
20 portion of the distribution which was to be paid
21 out by Sarbanes-Oxley to victims of that fraud.

22 And the initial response by the SEC was
23 that they weren't going to pay those dollars,
24 they weren't sure how they were going to pay
25 those dollars out, and we had to pursue, you

1 Porco

2 done.

3 I remember our attorney saying to us
4 that was unusual then. It wouldn't just end at
5 the fines but they would also allow the second.

6 So, basically, they viewed IAM as being
7 derivatively hurt. And basically without saying
8 it specifically, you know, we're kind of looking
9 at that section of the document that says, well,
10 you know, you can still go after them yourselves.

11 Well, we're not -- you know, that was not what,
12 it was just not reasonable to think that you are
13 going to take on that size of
14 David-and-Goliath-type of circumstance.

15 So there's still this penalty portion
16 which they haven't determined how they are going
17 to distribute. They could turn around and say,
18 you know what, these guys over at IAM and
19 Independent Fund Limited, they really were
20 damaged and they really should receive a portion
21 of this and they haven't done that yet.

22 They also have the ability that Sea
23 Carriers will prevail. And if they do -- and all
24 of these things were things that were of interest
25 to Dan. He knew of all of these coming in, he

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1 Porco

2 know, step by step, asking for relief based on
3 those damages.

4 So eventually we went to Congressman
5 Shays to make him aware of what had occurred and
6 he then in then on our behalf communicated to
7 Chairman Cox and others, by letter and so forth,
8 and we were eventually granted a meeting with the
9 SEC, where we were able to sit down with them and
10 explain what the damages were, how they occurred
11 and we asked, you know, that we be considered to
12 receive some of those because we were caught
13 right in the cross hairs with that in terms of
14 not receiving, the fund receiving its gains and
15 incomes and so forth. So congressman Shays
16 assisted us.

17 Q. What has been the result of that?

18 A. The end result is that the SEC
19 determined that even though these firms committed
20 this fraud and even though they damaged a lot of
21 people, my understanding is that they were made
22 to pay the fines, they had to pay these large
23 fines. But unlike many other circumstances where
24 that's the end of it, they also said that people
25 can also now sue them as well for what they've

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2 was interested in being involved and he was
3 looking forward to a positive outcome as were we.

4 Q. There's reference here "We lost the
5 case against Dieter." What is that?

6 A. Dieter Behring is an investment
7 professional, was an investment professional
8 overseas, that when we first launched the company
9 with the assistance of Richard Kovner, who is
10 Bruce Kovner's brother, of Caxton, Richard is
11 familiar with George's background, my background,
12 became very interested in us, in assisting us in
13 the development of the company going forward and
14 he also lent some assistance back and forth with
15 the offering memorandum to counsel. And Richard
16 was going to help us raise assets but he felt we
17 should seek out an investment professional that
18 had been active for a longer period of time on a
19 greater volume of money, and we identified after
20 some period of time with George traveling Europe
21 and Switzerland, this gentleman Dieter Behring,
22 and he was very, very well known in the European
23 circles.

24 This was a gentleman, you know, moving
25 hundreds and hundreds of millions of dollars, but

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 2 it turned out that much to everyone's surprise,
 3 including some of the most prestigious firms in
 4 London and France and elsewhere, that Dieter
 5 Behring was involved in cooking his books, and we
 6 had gone to some length to, with Richard Kovner
 7 who has since -- Richard passed on, he died, but
 8 when we got to raise money into this venture,
 9 which we had asked earlier was there any other
 10 fund, which was going to be, I mentioned the
 11 global fund earlier, before putting any money
 12 into it, it was Dieter Behring was asked for
 13 disclosure regarding his trading methodology and
 14 when he began to be asked very pointed question
 15 from the Kovner team who were prepared based on
 16 everything up to that point to begin to invest
 17 money in the fund, Dieter Behring basically
 18 became very arrogant, and said, "I'm Dieter
 19 Behring. I answer to no one," and later or
 20 shortly thereafter we discovered he didn't want
 21 to answer questions because we were asking
 22 questions he couldn't answer.

23 To make a long story short, we went to
 24 arbitration against him. Dieter Behring ended up
 25 being arrested, put in jail in Basel, and we

1 Porco
 2 Did George Szele take more than
 3 \$100,000 out of IAM during --
 4 A. Both George and I couldn't take our
 5 salaries, you know, per the operating agreement.
 6 George having two kids and one on the way was in
 7 greater need of income than I and, you know, as
 8 you get into a situation where there's less and
 9 less moneys available, and you need to take
 10 something for a draw, that references we had a
 11 phone conversation, and it was heated, and I
 12 said, "Look, I need something that's more
 13 substantive, something."

14 He was in a bad space and I was in a
 15 bad space. E-mail transpired and I was just kind
 16 of running -- maybe I shouldn't have said that
 17 because you have kids to feed, but he had taken
 18 more because he needed more. But at that point
 19 in time, you know, I was hurting pretty bad as
 20 well and needed, I needed income for regular
 21 expenses. I got vendors to call and they want to
 22 be paid. So that's what that was about.

23 Q. If you look at the first page of this
 24 in the third paragraph, it says, "In your
 25 desperation you took 4 X the money I was paid for

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1 Porco
 2 filed a suit and attempted to get the damages
 3 that he had caused.
 4 But despite the fact that he was guilty
 5 and he was thrown in jail and everything else,
 6 the arbitration team determined that they could
 7 not pierce the corporate veil, so even though he
 8 was a crook, he was a crook with a good document.
 9 And that was, I guess, the end of it. So that's
 10 what that's referring to.

11 Q. You make reference here to "the TPM
 12 scammed us for 50 K." What does that refer to?

13 A. Where is that?

14 Q. It's in an e-mail from you to George
 15 April 1, 2007, 8:32.

16 A. What that's about is the RCA group
 17 asked for the money back, and they didn't want to
 18 give the money back, and I was referring to the
 19 fact that that's a scam because they were
 20 supposed to perform.

21 Q. What does TPM stand for?

22 A. Third-party marketing group.

23 Q. In one of these e-mails you state, "I
 24 didn't take 100 K plus out of the company over
 25 the last 12 months (while, you did)."

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1 Porco
 2 your personal income. You also have been using
 3 company dollars to pay for expensive software in
 4 part trade your own account." Do you see that?

5 A. Yes.

6 Q. What are you referring to there?

7 A. What I am referring to is that the
 8 amount of gross proceeds that came out to he and
 9 to I was proportionately that much greater than
 10 mine, and that subject to having done the taxes,
 11 you know, where you do your capital contributions
 12 and such, you know, that was -- those are
 13 dollars, there really wasn't income to George.

14 You were just paying a software charge in order
 15 to track the market. And I just wanted to point
 16 out that this needs to be offset because I need
 17 income too. So it's really just referencing, you
 18 know, what little we have. You had a little bit
 19 more and I need some money now.

20 Q. Let me show you what we have marked as
 21 Zanger Exhibit 13.

22 (Zanger Exhibit 13 was marked for
 23 identification)

24 Q. This is the First Supplement to

25 Plaintiff's Response to Defendant's First Set of

1 Porco
 2 Interrogatories. Have you seen these before?
 3 A. I think I read through it. It was
 4 forwarded to me.
 5 Q. Do you see on page 2, the first item,
 6 Lost Fees?
 7 A. Page 2, Lost Fees.
 8 Q. And then it refers to Management and
 9 Performance Fees at the top? Do you see where it
 10 goes over to the top of page 3?
 11 A. Yes.
 12 Q. Do you have any knowledge or
 13 information as to the alleged amount of any such
 14 fees?
 15 A. No. I don't have any knowledge.
 16 Q. The next item is Lost Management Fees.
 17 Do you have any knowledge or information about
 18 any factual basis for the allegations set forth
 19 in that section?
 20 A. Well, I mean, I know what a fund, what
 21 the fund was supposed to earn, what the fund
 22 could have earned and what the -- that's just
 23 pointing out what the amount that would have
 24 otherwise been generated, right?
 25 Q. So this is calculated on the basis of

1 Porco
 2 Q. I show you what we have marked as
 3 Zanger Exhibit 14.
 4 MR. SEAR: I have a copy for counsel.
 5 (Zanger Exhibit 14 was marked for
 6 identification)
 7 Q. Can you tell me what this is?
 8 A. It's stating that there's an extension
 9 for us to file the tax return for Independent
 10 Asset Management and he's also asking for payment
 11 for this -- to the accounting firm.
 12 Q. Who is this person Francis X?
 13 A. He's the CPA of Independent Asset
 14 Management, it's a firm.
 15 Q. What's his last name?
 16 A. Infuria.
 17 Q. This makes reference to a 2005 net loss
 18 of \$241,000, is that right?
 19 A. It does.
 20 Q. Is that consistent with your
 21 understanding of IAM's performance in 2005?
 22 A. If the accountant has that figure
 23 there, I trust that it is accurate.
 24 Q. Do you have any knowledge or
 25 information as to what the loss was for 2006?

118
 1 Porco
 2 defendant's suggestion to place \$50 million into
 3 IFL, is that right?
 4 A. I don't know, I would have to read
 5 through it again.
 6 Q. Take your time.
 7 A. The numbers seem low for it to be 50
 8 million. I'm sorry I don't know. Except the
 9 numbers seem at first glance without using a
 10 calculator.
 11 Q. So you didn't perform these
 12 calculations?
 13 A. No, I didn't.
 14 Q. Did you have any knowledge or
 15 information as to how the lost performance fees
 16 are calculated as they have reference here?
 17 A. No, they were calculated by George and
 18 others.
 19 Q. Do you see the reference to Lost
 20 Trading Revenue? Do you know how that was
 21 calculated?
 22 A. No, all of this was George's role.
 23 Q. When you say all this, you mean all of
 24 the items in this document?
 25 A. Yes, this is something George had done.

120
 1 Porco
 2 A. I don't have any in front of me.
 3 MR. SEAR: Let's take a break.
 4 I note for the record that I asked
 5 earlier for either being informed as to the
 6 Bates numbers for the financial documents
 7 that were discussed earlier today or copies
 8 of those documents.
 9 Since Mr. Szele is going to be deposed
 10 on Wednesday, I would appreciate being
 11 informed of the Bates numbers, if those
 12 documents were in fact previously produced
 13 to us, by tomorrow morning.
 14 (Recess)
 15 (Zanger Exhibit 15 was marked for
 16 identification)
 17 MR. SEAR: Let me make a statement for
 18 the record. This witness has testified to
 19 the existence of e-mails from Goldman, Sachs
 20 dealing with alleged violations by Mr.
 21 Zanger of certain rules and regulations and
 22 complaints by Goldman, Sachs of margin call
 23 matters in 2005 and 2006.
 24 Candidly, we don't know what he is
 25 referring to since our review of the

1 Porco
 2 documents produced does not reveal any such
 3 documents.
 4 I would request that counsel provide us
 5 with the Bates numbers of the documents that
 6 correspond to what the witness has been
 7 testifying to, if in fact those documents
 8 have been produced.

9 (Recess)

10 EXAMINATION CONTINUED

11 BY MR. SEAR:

12 Q. Let me show you what we've marked as
 13 Zanger Exhibit 15, which is the amended summons
 14 and amended complaint in this action and ask you
 15 to take a look at it and tell us if you have seen
 16 this before.

17 A. Yes, I've seen it, yes.

18 Q. Did you authorize this to be served and
 19 filed?

20 A. George did.

21 Q. So I take it you did not?

22 A. No. George -- well, unless it
 23 requested both of our signatures, then I did.

24 Let me see.

25 Where would that page be?

1 Porco
 2 March 3, 2008
 3
 4 ERRATA
 5
 6 PAGE/LINE CHANGE/REASON
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

122

124

1 Porco
 2 Q. I'm not sure that there is a signature
 3 on this by principals.

4 A. If I recall some documents asked for me
 5 to sign, other documents were signed off by
 6 George.

7 Q. I don't believe you signed this
 8 document. So would it be fair to say that you
 9 did not authorize this document to be served and
 10 filed?

11 A. The final, any final authorizations,
 12 that power rests with George as the majority
 13 owner of IAM. I am a minority owner of the
 14 company.

15 Q. Do you have any recollection of
 16 authorizing this to be filed?

17 A. I don't personally recall signing off
 18 on this particular document. I'm just looking to
 19 see if I did or not. I don't see that signature
 20 page.

21 Q. I don't see you signing this.

22 MR. SEARS: I have no further questions
 23 of this witness at this time.

24 (Time noted: 2:31 p.m.)

1 Porco
 2
 3
 4
 5
 6
 7
 8 JOSEPH J. PORCO
 9
 10 Subscribed and sworn to
 11 before me this day
 12 of 2008
 13 _____

14

15

16

17

18

19

20

21

22

23

24

25

1
2 CERTIFICATE
3

4 STATE OF NEW YORK)
5) ss.
6 COUNTY OF NEW YORK)

7
8 I, Joseph B. Pirozzi, a Registered
9 Professional Reporter and Notary Public within
10 and for the State of New York, do hereby certify:
11 That JOSEPH J. PORCO, the witness whose
12 deposition is hereinbefore set forth, was duly
13 sworn by me and that such deposition is a true
14 record of the testimony given by such witness.

15 I further certify that I am not related
16 to any of the parties to this action by blood or
17 marriage and that I am in no way interested in
18 the outcome of this matter.

19

20

21

22 -----
23 JOSEPH B. PIROZZI, RPR
24

25

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1
2 March 3, 2008

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